

United States
Circuit Court of Appeals

For the Ninth Circuit.

Vol
2325
see Vol 2326

STERLING CARR, as Trustee in Bankruptcy
of NIPPON YUSEN KABUSHIKI KAI-
SYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARY-
LAND, a Corporation,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION,
LTD., a Corporation, and J. M. ANDERSEN,
Appellees.

(And Fourteen Consolidated Appeals.)

Apostles on Appeal

In Three Volumes

FILED


VOLUME II

AUG 20 1942

Pages 477 to 959

PAUL P. O'BRIEN,
CLERK

Upon Appeals from the District Court of the United States
for the Southern District of California,
Central Division



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

United States Circuit Court of Appeals
For the Ninth Circuit

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

(Title Continued on Succeeding Pages.)

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

(Title Continued on Succeeding Pages.)

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,
and J. M. ANDERSEN,

Appellees.

Apostles on Appeal

In Three Volumes

VOLUME II

Pages 477 to 959

Upon Appeals from the District Court of the United States
for the Southern District of California,
Central Division

GERALD T. JONES,

a witness called by and on behalf of the libelants, having been first duly sworn, testified as follows:

The Clerk: State your name.

A. Gerald T. Jones.

Direct Examination

Q. By Mr. Cluff: Mr. Jones, you were a witness to the collision between the "Olympic" and the "Sakito Maru"? A. Yes.

Q. And you witnessed that from your own little vessel, called the "Pat"?

A. That is right.

Q. What time did you arrive on the fishing grounds with the "Pat", on the morning of the collision?

A. I would say I was there about fifteen minutes before the collision.

Q. Who was with you on the "Pat"?

A. Mr. Harris.

Q. Mr. Harris? A. Yes.

Q. Anyone else? A. And his boy. [133]

Q. How old is the boy?

A. He is about eleven or twelve, I guess.

Q. Just tell us very briefly what sort of a boat the "Pat" is; how long?

A. It is 23.11 feet long, and 6½ feet beam.

Q. A little pleasure fishing craft?

A. That's right.

Q. You were not commercially fishing; just out for pleasure?

(Testimony of Gerald T. Jones.)

A. Pleasure fishing.

Q. What is your occupation?

A. Fireman.

Q. City fireman? A. Yes.

Q. I want to show you "Olympic's" Exhibit Number 4, which purports to be a delineation of the relative positions of the three barges, as they lay on the Horseshoe Kelp, to which Mr. Grothe of the "Marell", has added the position of his vessel with reference to the "Olympic" barge. Do those relative positions of the barges disagree as to distance, or anything like that, coincident with your recollection of how the three barges lay with reference to each other?

A. That is just about the picture.

Q. I wish you would take this pencil, and draw in the point where the "Pat" came to anchor, A trifle further to the east from the "Olympic", and also a little to the north. [134]

A. That is right.

Q. Than to the "Marell"? A. Yes.

Mr. Adams: Further east from the "Olympic"?

Mr. Cluff: A trifle to the eastward, and somewhat to the south of her. You were anchored with the stern to the sea.

A. The stern was to the west, and the bow was to the east.

Q. Suppose you draw in there just about how you lay. Do you know how the tide was? Were you swinging on the tide with just one anchor?

(Testimony of Gerald T. Jones.)

A. That was all; just one anchor.

The Court: Mark that with a "P".

Mr. Cluff: We will mark this "P" for "Pat". So far as you can tell, were you lying the same way, or in a different way than the little "Marell" was lying?

A. As nearly as I can remember, their bow was to us.

Q. Their bow was toward your side?

A. So far as I can remember, yes.

Q. Did you engage in fishing as soon as you arrived there?

A. It took us, to put down the anchor, about five minutes, I guess.

Q. Where did you come from, as you came out?

A. From the Los Angeles breakwater.

Q. Right out through the Los Angeles breakwater? A. Yes.

Q. As you approached the barge, what was the condition of [135] the weather with respect to fog or clearness?

A. Coming out, the visibility was about, I would say, approximately three hundred yards.

Q. About how far, approximately three hundred yards? A. All the way out.

Q. What was the first barge you saw, if you remember? A. The "Point Loma."

Q. About how far away was she when you made her out through the fog?

A. I would say about three hundred yards, approximately.

(Testimony of Gerald T. Jones.)

Q. About three hundred yards; then did you later make out the "Olympic"?

A. Shortly afterward, yes.

Q. Shortly after you made out the "Point Loma" you could also make out the "Olympic"?

A. Yes.

Q. About the same visibility? A. Yes.

Q. About three hundred yards? A. Yes.

Q. When you took your position at anchor, from then on did the visibility change?

A. Quite rapidly.

Q. How did it get, lighter or thicker?

A. Started to lighten up.

Q. What? [136]

A. The fog started raising.

Q. The fog started to lighten from the time you anchored? A. That's right.

Mr. Adams: Started to raise, the witness said.

Q. By Mr. Cuff: Started to raise?

A. Thin out.

Q. When you say raise, did you mean to go up in the air, or did you mean to get less dense?

A. Less dense.

Q. As you approached the barges could you hear the bells ringing? A. Yes, on all the barges.

Q. Would you describe about the way those bells were ringing?

A. Well, I would say they would ring about around minute intervals.

Q. About a minute interval? A. Yes.

(Testimony of Gerald T. Jones.)

Q. And in peals of dang, dang, dang, repeated peals? A. That's right.

Q. As you came to anchor, could you pick out the "Olympic" bell, distinguish that? A. Yes.

Q. Did you hear that ringing?

A. That was ringing.

Q. Did it ring continuously from that time until the [137] collision?

Mr. Adams: I think that is leading and suggestive.

The Court: It is leading.

Mr. Cluff: Yes, that it leading. I withdraw it. Put it this way: You heard the "Olympic's" bell ringing when you anchored? A. That is right.

Q. State how long that ringing continued with reference to the collision.

A. It was ringing the whole time till——

Q. How about the other barges?

A. They were ringing; all ringing.

Q. I wonder if you will take this little bell? I will hold it here for you, and see if you can ring a peal such as your heard from the "Olympic"? Did anybody catch the time? Did you, Mr. Adams?

Mr. Adams: No, you didn't loan me your watch this time.

Mr. Bullard: I was timing the witness. I timed it five seconds, as nearly as I could determine.

Mr. Cluff: Will you stipulate that is about right?

Mr. Adams: I will stipulate that is what Mr. Bullard timed it at.

Q. By Mr. Cluff: Were the other barges ringing about the same way, Mr. Jones.

(Testimony of Gerald T. Jones.)

A. Just about the same way.

Q. Did you hear, after you came to anchor, the whistles [138] of any other vessels?

A. I did not hear none, no.

Q. At any time? A. No, sir.

Q. When was the first indication that you had of the nearness of the Japanese vessel, the "Sakito Maru"?

A. Well, I did hear the "Sakito Maru" whistle. I am positive that was it—just before it loomed up out of the fog.

Q. Then you did hear the whistle of some vessel at some time after you came to anchor?

A. Yes.

Q. About how long was this, as nearly as you can tell, after you came to anchor?

A. It was quite a while after we came to anchor.

Q. Can you give us any idea in minutes?

A. No, I can not.

Q. After you heard that whistle, did you see any vessel approaching? A. Not right away, no.

Q. How long after the whistle was it before you saw any vessel? A. I would say a minute.

Q. About a minute after you heard this whistle? Did you hear more than one whistle?

A. That was all I heard.

Q. And then a vessel appeared? [139]

A. That is all I know.

Q. From what direction did the vessel appear?

A. As nearly as I can recollect it was from the south.

(Testimony of Gerald T. Jones.)

Q. I show you again the little drawing where you have drawn in the "Pat", and will you state in what direction the vessel appeared.

A. About something like that.

Q. I wonder if you would take the pencil and just make a little cross in the direction from which the Japanese vessel first approached? Just make a cross.

A. Well, in my mind that was about like that.

Q. All right. Just about like that over to the southeast from where the "Pat" was lying?

The Court: Mark that "J".

Mr. Cluff: Yes, just mark this "J".

The Court: If you will put a cross on top of that "J" we will be able to figure out what it is.

Mr. Cluff: It is like half an anchor now.

Mr. Adams: May I inquire what this is to represent, this "X"?

Mr. Cluff: The direction from which the "Sakito" approached. The direction from which the "Sakito" approached the "Pat".

Mr. Adams: From the "Pat"?

Mr. Cluff: From the "Pat", the "Pat" being indicated here.

Q. When you saw that vessel how far away did she appear to you? [140]

A. Well, I would say about, about three lengths of the "Sakito Maru".

Q. About three lengths of the "Sakito". The "Sakito" was five hundred feet long or thereabouts. In what direction did she appear to be headed, that

(Testimony of Gerald T. Jones.)

is, how was she moving, in what direction with respect to the "Olympic" or with respect to the "Pat" or any other object that you could see?

A. Well, as near as I could figure out, it was headed for the "Olympic".

Q. Will you try to speak a little louder, Mr. Jones?

A. As near as I can figure out it was headed for the "Olympic".

Q. It will be pretty hard to tell? Which side of her could you see from the "Pat"?

A. Well, I could see, it would be the righthand side.

Q. The righthand side. Could you form any estimate as to how fast she was going?

Mr. Adams: That calls for a yes or no answer.

A. No; I couldn't say.

Q. By Mr. Cluff: Could you see any bow wave, water thrown up by her bows?

A. Yes; I could see it.

Q. About how long was it between the time you first saw her at the place you have indicated and the collision?

A. Oh, possibly be a minute and a half.

Q. About a minute and a half. now, following the time [141] you sighted her what course did she appear to follow to you?

A. Well, north to the south—from the south to the north, something like that.

Q. From south to north; and towards or away from the "Olympic"?

(Testimony of Gerald T. Jones.)

A. Away from the "Olympic."

Q. What is that?

A. Away from it.

Q. And away from the "Olympic". That is, away from the "Olympic" and across her bow or across her stern?

A. Across the, across the—well, across the stern, I guess, or the bow. Across the bow.

Q. Across the bow. That is, the bow was away from you? A. Yes.

Q. And the stern of the "Olympic" was toward you. Now, did you notice her change her course in any way? [142]

A. I did not.

Q. So far as you know, she did not change her course at all? A. No.

Q. Did you see her strike the "Olympic"?

A. No. From the view we had, we didn't see the impact.

Q. What is that?

A. From where we was we couldn't see it.

Q. Your position was where, to the starboard side of the "Olympic" and not the port side?

A. That is right.

Q. Were you able to hear the collision?

A. Yes; we heard the crash.

Q. What did it sound like?

A. Well, just a loud crash.

Q. Just a loud crash. As the "Sakito" approached the "Olympic" did you have a clear view of her forward deck? A. Yes.

(Testimony of Gerald T. Jones.)

Q. Did you see any person or any man——

Mr. Adams: Now, just a minute. If the court please, I move that that previous answer be stricken as a conclusion of the witness as to whether he had a clear view of the forward deck. I think it is quite obvious that any person lying on the water in a small boat would not have a clear view of this forward deck. [143]

The Court: Well, I think that is probably true.

Mr. Cluff: The witness has said he had a clear view.

Mr. Adams: Well, I move it be stricken as a conclusion as to whether he had a clear view or not. Let him testify——

The Court: Well, he can testify. He asked the question and he said he had a clear view. I don't see how he could have a clear view of the boat in the water and the height of that boat above the water, but he so testified. It simply goes to the weight of the testimony.

Q. By Mr. Cluff: Showing you "Olympic's" Exhibit 5, and I will ask you if that is a picture of the vessel you saw that morning?

A. Yes; I think that is the vessel.

Q. And that is the vessel. Speak just as loud as you can, Mr. Jones. There are a number of people here. Directing your attention to a point right up in the eyes of the vessel here, right up where the two bows come together, did you see the figure of a man there with his body above the waist above the height of the bulwark?

(Testimony of Gerald T. Jones.)

A. I saw no one.

Q. Or any part of the figure of a man?

A. No, sir.

Q. Did you particularly look to see if there was a person on the forward deck?

Mr. Adams: Objected to as leading and suggestive.

The Court: It is leading and suggestive. [144]

Mr. Cluff: Withdraw it.

Q. As the "Sakito Maru" approached the "Olympic" did you hear any change in the ringing of the "Olympic's" bells?

A. Just before it hit they speeded up the bell.

Q. Just describe a little more in detail how they speeded up. Was it longer peals or what happened?

A. Well, just before the crash there was a steady beat.

Q. A steady beat all the time, that is, long intervals. About how long did it seem to you that that went on?

A. It wasn't very long. I wouldn't know just how long it was.

Q. Do you know about how far, in lengths of the "Sakito Maru", she was from the "Olympic" at the time that ringing started?

A. Well, about a length, I guess.

Q. About a length? A. Before.

Q. Did the "Sakito Maru" seem to slow down as she approached the "Olympic"?

(Testimony of Gerald T. Jones.)

A. I don't believe so.

Q. The rate of speed appeared to you to be about the same?

A. About the same at all times.

Q. After the crash took place what happened with [145] respect to the two vessels?

A. Will you repeat that?

Q. That is, did they move from their positions; did the "Olympic" move from her position?

A. It seems as though that at about, I would say, 50 feet she pushed the "Olympic" about 50 feet, from the way it looked to me.

Q. Was that so from your position in the "Pat" you could still see the starboard side or could you see it? A. Of the "Olympic"?

Q. Of the "Olympic".

A. Yes; I could still see the starboard side.

Q. How is that?

A. I could still see the starboard side.

Q. You could still see the starboard side.

Mr. Adams: Does the witness mean after the "Olympic" came to rest?

Mr. Cluff: Yes.

Q. Was that after the "Olympic" came to rest you could still see the starboard side?

A. Yes, sir.

Q. Did the "Olympic" take a heel or a tilt over to starboard, do you know?

A. Not as I remember.

Q. Not that you recall? A. No. [146]

(Testimony of Gerald T. Jones.)

Q. Following the time the two vessels came to rest what happened next?

A. Well, when they came together it seems as though that they either—I don't know if he used his power to reverse, but anyway, he backed up.

Q. The vessels separated. And did the distance between them continuously widen?

A. Yes, sir.

Q. Were you in a position to see the stern of the "Sakito Maru" where the screws turn?

A. No, sir.

Q. What did you, with your partner, do on the "Pat" about the time of the impact?

A. Well, Mr. Harris, he pulled the anchor and I took the wheel.

Q. You took the wheel. And then did you move somewhere?

A. Well, we went on over to the wreck from there after he got the anchor up but while he was getting the anchor up the "Olympic" already went under.

Q. The "Olympic" went down while you were getting the anchor up; and then you went over and joined the other boats in the search for survivors? A. That is right.

Q. After the impact did you see any man on the forward deck of the "Sakito Maru"? [147]

A. I did not.

Q. After the impact you did not?

A. Oh, yes. Just when it hit there was someone run up, run up forward.

(Testimony of Gerald T. Jones.)

Q. That is, ran from the bridge deck up towards the forecandle head?

A. Run from the middle up to the bow.

Q. Let me show you the "Olympic" 6, a picture showing the forecandle head and a part of the well deck, starboard side, "Sakito Maru". If I understand you correctly, the man you saw was coming from back here and going forward?

A. Yes; it seems like it was right in here somewhere.

Q. Right in there, indicating a position on the well deck just aft of the break of the forecandle head.

Mr. Adams: That is correct.

Q. By Mr. Cluff: As the "Sakito Maru" struck the "Olympic" did you hear any whistles from the "Sakito Maru" or thereabouts, either before or after?

A. Just before they whistled, but I don't know how many times.

Q. Would you say that it was more than one whistle? A. I couldn't say.

Q. And with reference to the time of the impact about how long before?

A. Well, it wasn't but just a few seconds. [148]

Q. Just a few seconds. Did you see any lifeboat from the "Sakito Maru" after the collision?

A. Not right away.

Q. How long after? A. About 20 minutes.

Q. About 20 minutes afterwards?

A. I would say 20 minutes.

Q. And where did that lifeboat come from?

A. The first time I noticed the lifeboat was when

(Testimony of Gerald T. Jones.)

they approached the wreck and that was to the left of the wreck.

Q. How did you identify it as a lifeboat from the "Sakito Maru"?

A. By the Japanese crew.

Q. The Japanese crew. You have owned the "Pat" for how long, Mr. Jones? A. Two years.

Q. And during that time have you fished around in waters around San Pedro Bay quite a bit?

A. Yes, sir.

Q. And on Horseshoe Kelp where the barges lie?

A. Mostly Horseshoe Kelp.

Q. How long have you known of the fishing on Horseshoe Kelp? A. About two years.

Q. And you have fished there for two years? [149] A. Yes.

Q. About how often did you get out there?

A. I averaged about twice a month.

Q. Averaged about twice a month. That has been true during the past two years?

A. Well, during the fishing season, just the summer months.

Q. Just the summer months. When you say just the past two years, do you mean the two years, that is, 1940 and 1941, or 1939 and 1940?

A. 1939 and 1940. 1929—1939 and 1940.

Q. During that time did you have occasion to observe what vessels fished on Horseshoe Kelp?

A. All types of—

Mr. Adams: I object to this question and this line of questioning upon the same grounds as I have

(Testimony of Gerald T. Jones.)

The Court: The same ruling.

Mr. Adams: I might add this further objection: That I think the experience of this witness is considerable less than the other and the objections are stronger in this case than in the other case as to his experience and occasion to make any observations out there.

The Court: He was out there for two years. He is testifying to what he saw. That is all either one could testify to. You may proceed. [150]

Mr. Cluff: Will you read the question, please, Mr. Bargion?

(Question read by the reporter.)

A. Well, there is all types of sports fishermen and commercial fishermen.

Q. Have you been out there on Sundays, Saturdays, Sundays and holidays, as well as week days?

A. Quite a few times; yes.

Q. Could you give the court an idea of about how many vessels fish around in the area of the three barges on, say, Saturdays and Sundays or holidays during the season?

Mr. Adams: My objection goes to this whole line of questioning. Does the court understand that to be the case?

The Court: Yes.

A. I would say there was—well, sometimes 75 to 100, as high as 75 to 100 out there on holidays and Sundays.

Q. By Mr. Cluff: At all times during the fish-

(Testimony of Gerald T. Jones.)

ing season there are a number of vessels besides the two or three fishing barges? A. Yes.

Q. By the Court: That is, when you happen to be out there? A. Yes, your Honor.

Q. By Mr. Cluff: What type of vessels, different types of vessels have you seen there?

A. Oh, there is these live bait boats and also all [151] kinds of fishing, all kinds of commercial fishing boats.

Q. Have you ever seen any purse seiners, big nets, you know?

A. No; I have never seen no purse seiners.

Q. Sports fishermen of all kinds?

A. Yes, sir.

Q. As well as commercial vessels like the "Marell"? A. That is right.

Q. You are not a claimant here and have no interest in this case whatsoever, Mr. Jones?

A. No.

Mr. Cluff: That is all.

Mr. Adams: Just a minute, Mr. Jones, please.

The Court: Just a moment.

Cross-Examination

Q. By Mr. Adams: Mr. Jones, how high above the surface of the water was the deck of the "Pat" as you anchored there that day?

A. Oh, I would say about two feet.

Q. About two feet? A. That is right.

Q. Isn't it a fact, Mr. Jones, that you saw the lifeboat of the "Sakito" about 10 minutes after the impact? Wouldn't that be more accurate?

(Testimony of Gerald T. Jones.)

A. It seems like it was around 20 minutes. [152]

Q. Do you recall having testified before the C-board on the day of this collision? A. Yes, sir.

Q. At San Pedro?

A. Yes; I remember something.

Q. I want to refer to your testimony given at that time and ask you if you recall this question being asked you and you giving this answer, on page 3 of that transcript:

“Q. Did you afterwards see any of the steamer’s life-boats in the water?

“A. Not right away. They didn’t put any life-boats in for—the first time we noticed them was a good ten minutes.”

Does that refresh your recollection? Do you wish to change your testimony?

A. Well, at that time I was quite excited and I had to go to work, see, and I was pushed for time and I wanted to get out and get back to work, see; and they rushed it right through and I didn’t get a chance to really think it out.

Q. Is that the impression——

The Court: May I ask what difference does it make whether it was 10 or 20 minutes?

Mr. Adams: Well, there is a charge, if the court please, that the “Sakito Maru” just anchored there and did nothing. I am endeavoring to demonstrate—— [153]

The Court: I know, but even if it did not do anything there was nothing to be done, according to the statements, as I understand it. There were other

(Testimony of Gerald T. Jones.)

boats right there and everybody that it was possible to pick up by other surrounding boats were picked up, so that even if you had gotten your lifeboats down, it would not have either added or detracted.

Mr. Adams: I agree with the court.

The Court: I just want to know and hear from counsel on that. There is no argument about this boat. The two boats separated and they pulled back a certain distance. In due time it let its anchor down and in due time lifeboats came out. But whether it was 10 or 20 minutes, what difference does it make?

Mr. Cluff: As far as the *Hermosa* and Captain Anderson are concerned, that the failure, if it was a failure, of the "Sakito" to get a lifeboat in the water has contributed in any way to the damages here, I don't know. We pleaded it at the time the answers were drawn, but I don't, perhaps, as I see the case now, make a point on it.

The Court: Let us proceed, gentlemen.

Mr. Adams: If counsel will eliminate that as an issue, I will certainly eliminate it from my question.

The Court: Well, the court is going to eliminate it, anyhow, unless counsel can show where it is of some materiality. So far as this court is concerned, the facts indicate here that this other boat was right there on the [154] job and able to pick up anybody. and if there had been 40 lifeboats out there, they probably couldn't have done any more than they had done.

(Testimony of Gerald T. Jones.)

Mr. Lippert: Your Honor, I would like to refer to the statute governing the situation, on behalf of intervening libelant Frank Mayo, that there was a duty imposed upon the master of the vessel to furnish us by way of lifeboat. I think we have pleaded it, likewise.

The Court: I know, but what difference does it make whether it came down in 10 minutes or 20 minutes?

Mr. Lippert: It would go to the question of negligence.

The Court: All right, gentlemen, you can spend all the time you want here, but I am going to work you 10 hours a day if you are going to do it, if you are going to waste your time on a lot of immaterial matters. We are interested in what caused this collision and what happened afterwards. There might be some question on this withdrawal of this boat, the separation. There may be some point to that, but as far as this court is concerned, you can make your record. But I am not going to pay much attention to the question of rescue, letting down the lifeboats, whether it was 10 minutes or 20 minutes.

Mr. Adams: Of course, I might say that our testimony will show that it was done right immediately that the anchor dropped.

The Court: It took you some time to get back where [155] you could drop your anchor.

Mr. Adams: Obviously.

The Court: So there were several minutes

(Testimony of Gerald T. Jones.)

elapsed; so I don't see what difference it would make.

Q. By Mr. Adams: Mr. Jones, did you see the "Sakito" and the "Olympic" at the sound of the impact?

A. Not a full view. I just saw the—well, just the top of the "Sakito Maru", you know, just above the—see, it is quite a bit higher than the "Olympic".

Q. Yes. Let me ask you this question: When you first saw the "Sakito Maru", which was some distance away, how much of that vessel could you see at that time? A. Before they hit?

Q. Yes; the first time you saw the "Sakito".

A. We had a full view.

Q. Were you able to see all of her superstructure? A. Quite so.

Q. Could you see her masts clear to the top?

A. I didn't particularly pay no attention to that.

Q. I see. Then after the impact did you continue to watch the two vessels until the "Olympic" came to rest? A. Yes, sir.

Q. When was it that you noticed that the "Sakito" was separating from the "Olympic" with reference to the time that the "Olympic" came to rest: was it before or after the "Olympic" came to rest? [156]

A. Well, it was after, as near as I can recollect, it was afterwards, after the "Olympic" come to rest.

Q. And was it just almost immediately afterwards?

(Testimony of Gerald T. Jones.)

A. As far as seconds or minutes I wouldn't know.

Q. Well, do you have an impression of any appreciable length of time elapsing after the "Olympic" came to rest before the "Sakito" pulled out from the hull?

A. I wouldn't know, I wouldn't know.

Q. Would you say it was less than a minute?

A. Why, as near as I can——

Q. Or you just don't have any recollection?

A. No; I don't.

Q. How many fog signals of the "Sakito" did you hear before you sighted her?

A. As near as I remember, it was one.

Q. Do you think it might have been more than that? Are you sure it was only one?

A. I wouldn't be sure.

Q. What were you doing just a little before you heard this whistle which you later thought was the "Sakito's" whistle?

A. I was——when I heard the first whistle we were rigging up our bait tank.

Q. And had you been doing that several minutes before that time?

A. Well, we was getting ready to fish and Mr. Harris, [157] he was fishing and I was getting the bait tank ready.

Q. You were busy aboard the boat?

A. Yes, sir.

Q. Doing the odd jobs, for several minutes prior to the time you heard the "Sakito" whistle, was that correct?

A. That is right.

(Testimony of Gerald T. Jones.)

Q. Were you listening for whistles?

A. Yes; we was listening for whistles.

Q. Did you have your own bell sounding?

A. We had—no; it wasn't. When we got out there the fog was lifted enough where we felt like we didn't need to ring the bell. [158]

Q. How far do you think visibility was at that time?

A. Well, when we first got there it was a good three hundred yards.

Mr. Cluff: May I have that answer, Mr. Bargion, please?

The Court: It was a good three hundred yards when he first got there.

Q. By Mr. Adams: You considered then, that you did not need to sound fog signals? A. No.

Q. Were the bells being sounded on the barges adjacent? A. Of the barges.

Q. By the Court: How long after you arrived there did you first see the "Sakito Maru"?

A. Well, I would say it was about—when it first appeared, it was about, I would say, about fifteen minutes.

Q. In other words, about fifteen minutes elapsed?

A. Yes, sir.

Q. Was the visibility greater at the time you saw the "Sakito Maru" than at the time you arrived?

A. The fog was thinning out, your Honor.

Q. So that when you arrived the visibility, as you figured, was about three hundred yards?

(Testimony of Gerald T. Jones.)

A. When we arrived.

Q. Then, what was your figure as to visibility at the time you first saw the "Sakito Maru"?

A. Oh, it was, I would say, oh, approximately maybe two [159] miles in that twenty minutes. When we got there the fog was thinning fast.

Q. You think it was.

Mr. Adams: May I have that answer and that question, please?

A. When we first arrived——

Mr. Adams: I mean't the reporter, Mr. Jones.

The Court: Yes, let the reporter read it.

(Answer read by the reporter.)

Q. By the Court: What first attracted your attention to the "Sakito Maru"? Were you looking for it? A. No, sir. We——

Q. Did you just happen to look up there and see it coming?

A. We would probably have seen it sooner if we had looked.

Q. In other words, when you looked up you saw the "Sakito Maru" there how far away?

A. I would say it was about three lengths from the "Olympic".

Q. And the whole ship was visible to you at that time?

A. We had a very good view, your Honor.

Q. But that was the first time you had seen it?

A. That we noticed it.

Q. And whether you could have seen it a greater distance or not you don't know?

(Testimony of Gerald T. Jones.)

A. I don't know. [160]

Q. By Mr. Adams: Mr. Jones, do I assume that at that time you judged the visibility to be about two miles?

A. Well, it approximately was somewhere around there.

Q. Somewhere around two miles?

A. I don't know just how far the "Rainbow" barge was, but you could see that. You could see the "Rainbow" barge.

Q. And it was at that time when you first saw the "Sakito" three lengths away from the "Olympic"?

A. Yes, sir.

Q. And it was not until the "Sakito" was one length away from the "Olympic" that you heard a continuous ringing of the "Olympic" bell, is that correct?

A. Yes.

Q. How often prior to that time that you heard a continuous ringing of the "Olympic" bell had you heard her bell?

A. Well, the whole time that we were there we heard it. He rang her bells about every—I don't know. They would ring them, maybe a minute, then it would not ring again for maybe a minute, or something like that.

Q. Do you think it rang steadily for an entire minute?

A. Well, maybe not a minute. It is hard to say any more.

Q. Let me refer to your testimony before the

(Testimony of Gerald T. Jones.)

Sea Board on September 4, 1940. You were the first witness, I believe, at that hearing which was convened at 10 o'clock p.m. This was just about six hours after the collision, wasn't it?

A. Somewhere around there. [161]

Q. On page 2. See if you recall this question and your giving this answer:

“Q. Will you describe to the Board the happenings from the moment you were aware an accident had occurred on the fishing barge “Olympic II”?”

“A. Well, all I can say, we heard the fog whistle on the Japanese boat and we heard it but we didn't see it. We also heard the bell on the barge.

“Q. Which did you hear first?”

“A. We heard the bell. The bell was continuously going on the barge and the whistle on the Japanese boat, I imagine, seemed like every two minutes or something like that.”

Does that refresh your recollection?

A. The bell?

Q. Yes; the bells and also as to hearing the whistle of the Japanese boat more than once because you had estimated—I take it your answer had reference to something; when you say “seemed like every two minutes”, that your answer had reference to the Japanese boat also?

A. Well, when we first heard it, before we seen it we heard it, but I didn't pay no attention then, went to work on our bait tank, and the next time it whistled, as near as I recollect, it was just before the crash, as near as I can remember.

(Testimony of Gerald T. Jones.)

Q. Do you recall having given that testimony before the C-Board? [162]

A. Yes; I believe I do.

Mr. Adams: No further questioning. Just a minute, please. No further questioning.

The Court: Any further questions, gentlemen?

Mr. Cluff: Anyone else any questions?

Mr. Eastman: Your Honor, I would like to ask some questions:

Cross-Examination

Q. By Mr. Eastman: You remained in the vicinity of the collision for some little time afterwards, Mr. Jones. Was your boat in the vicinity where the "Olympic" was? A. Yes, sir.

Q. Did you rescue any of the survivors?

A. No; we didn't.

Q. Pick up any bodies? A. No, sir.

Mr. Eastman: That is all, thank you.

Mr. Cluff: One question I neglected to ask on direct.

Redirect Examination

Q. By Mr. Cluff: As the two boats separated after the collision did you hear any noise?

A. When they pulled away?

Q. Yes; when they separated.

A. No; I can't say that I do right now.

Q. You don't recall hearing any noise at all? [163] A. No.

Q. Did you see any disturbance of the "Olympic's" decks or structure?

(Testimony of Gerald T. Jones.)

A. No; I didn't.

Mr. Cluff: That is all.

The Court: That is all. Call your next witness.

Mr. Cluff: Mr. Harris. [164]

LLOYD A. HARRIS,

called as a witness on behalf of the libelant, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Lloyd A. Harris.

The Clerk: Lloyd A. Harris. Take the stand.

Direct Examination

Q. By Mr. Cluff: Mr. Harris, you were with Mr. Jones on the "Pat" on the morning of the collision between the "Sakito" and the "Olympic"?

A. That is right.

Q. I show you the position with reference to the "Olympic" as designated by Mr. Jones a moment ago, and ask if that coincides with your recollection, this being the "Olympic", the "Point Loma", the "Rainbow", the "Little Marell" and the "Pat"? If there is anything there that does not—

A. If I remember right, I believe the boat was swinging more in a position like this.

Q. That is, more in the heading of the "Marell"?

A. If anything, a little bit closer to the "Olympic", right approximately there.

Q. Otherwise, is the general setup—

(Testimony of Lloyd A. Harris.)

A. Because I was fishing over the side where I had very nearly a complete view of the landing platform of the "Olympic". [165]

Q. So that the best, as you understand it, it was riding a little more south on her anchor?

A. Yes; I believe a little more like that.

Q. And possibly a little more to the "Olympic" than Mr. Jones' pictured? A. Yes.

The Court: That is not supposed to be according to distances, anyhow.

Mr. Cluff: Oh, no.

Q. You arrived at what time?

A. Well, I don't know the definite time of arrival or anything, but somewheres around seven o'clock.

Q. Approximately?

A. A few minutes to seven.

Q. A few minutes to seven or seven o'clock.

A. That is right.

Q. You came out through the breakwater?

A. That is right.

Q. As you approached the barges could you hear their bells? A. Yes.

Q. Could you hear them before you saw them?

A. Yes; we did.

Q. About how long before you saw them?

A. Oh, that is very hard to state the time. I didn't pay any particular attention to the time at all. [166]

Q. But you could hear the bells from all the barges? A. That is right.

(Testimony of Lloyd A. Harris.)

Q. Do you remember which was the first barge you could see? A. The "Point Loma".

Q. And then did you later see the "Olympic"?

A. That is right.

Q. About what was the visibility at the time you first saw the "Point Loma"?

A. Well, I would say that we saw the "Point Loma" about as we were approaching the "Point Loma", we saw it about the same distance as we were able to see the "Olympic", because we were close by the "Olympic"—the "Point Loma", rather, we were able to see the "Olympic" barge.

Q. Yes.

A. Though the distance there between them I don't know, but that would be just about—

Q. The distance between the two?

A. That is right.

Q. Could you see the "Rainbow" barge as you came up?

A. Yes. It was rather dim. In fact, at times as we approached it—

Q. Did you go astern of the "Point Loma" or around her bows to get to your position?

A. I think we passed to the stern.

Q. Passed to the stern? [167]

A. I am not certain about that.

Q. As you passed to the stern you could see the "Rainbow" barge hazily in the distance?

A. Yes; you could dimly, very dimly, make out the outline.

(Testimony of Lloyd A. Harris.)

Q. After you reached your anchorage and dropped anchor what did you do next?

A. Proceeded to fish. I did, and my partner was doing some other things.

Q. As you came up to your anchorage and then from then on what was the situation with regard to the bells from the barges?

A. Well, they were jangled enough to get on my nerves. I asked him, told my partner, "I hope the fog soon lifts so they wouldn't bother me."

Q. Could you hear the bells from all three barges?

A. Yes, sir.

Q. How were they ringing?

A. Well, intermittently.

Q. What was that?

A. Rather intermittently, like they were answering.

Q. That is, ringing in rotation?

A. That is right.

Q. About what intervals was there between the ringing of the "Olympic" barge?

A. Well, I don't know. They rang quite often.

Q. What was that, rang quite often? [168]

A. Yes.

Q. Did they ring in a series of three, or did there seem to be a steady ringing, one, two, three, four, five, six and so on?

A. No; it was not a steady ringing. It was slow as it went the circle.

Q. There were three would ring, then a break,

(Testimony of Lloyd A. Harris.)

and then three would ring again? A. Yes.

Q. You don't care to make an estimate of the intervals?

A. No; I don't know the time; but I do know we listened to the——

Q. You heard Mr. Jones ring a peal on that bell we *here* a few minutes ago? A. I did.

Q. Would you say that that was a fair representation of the peals you heard from "Olympic"?

A. Yes, sir; I would.

Q. When did you first realize, or when did you first see or hear anything of the vessel that later turned out to be the "Sakito Maru"?

A. Well, after we had been fishing some time, I wasn't sure whether we heard a whistle, a fog whistle or not, but later on while we were——

Q. You heard something you thought was a whistle? A. Yes, sir. [169]

Q. From which direction?

A. From the south, I would say.

Q. It came from the south. Did you hear that repeated? A. Yes.

Q. Later?

A. After, if that was a whistle. We didn't know whether it was or not. [170]

Q. Later you heard something that you knew was a whistle?

A. Yes; heard distinctly a fog horn, a whistle, heard her whistle of some kind.

Q. How many times was that repeated?

(Testimony of Lloyd A. Harris.)

A. We heard it the one time.

Q. You just heard it the one time you could be sure it was a whistle?

A. Yes.

Q. With reference to hearing that whistle when did you first observe the "Sakito Maru" appear?

A. Well, not too long after we heard the whistle.

Q. Where did she appear with reference to the "Pat" as she was lying?

A. Well, that would be off—we stood to the—that would be to our left, to me, as I stood facing.

Q. That would be to the left?

A. Left side of our boat.

Q. In the direction on the compass?

A. Well, it would be south, I guess.

Q. Due south?

A. Maybe east, easterly direction, southeasterly direction possibly.

Q. From a point that would be southward between you and the "Olympic", or to the other side of you?

A. Well, it would be pretty much south of us, it seemed to me. [171]

Q. When you first saw that, just what happened to you first?

A. Well, I don't know. It is hard to explain as you look up, and it was quite distinctly to me rather a dark mass, and very soon became a ship.

Q. That is, it first looked like a dark mass and then became a ship?

A. Yes. It was not——

Q. When you first saw it as a dark mass—pardon me.

(Testimony of Lloyd A. Harris.)

A. It was not distinctly plain as a ship when I first looked up.

Q. When you first saw it as a dark mass how far away did it appear?

A. Well, that is, it didn't seem so far away, yet it seemed as if it could have been quite a ways.

Q. Later you got a pretty good view of the starboard side of this vessel, I take it?

A. Starboard side, you will have to pardon my—

Q. That is your right-hand side.

A. That is right, after.

Q. After a while?

A. Well, very shortly. It very shortly became quite clear.

Q. What I am trying to get at is if you can give us an idea how far away she first appeared in her own lengths.

A. Well, three to four lengths. [172]

Q. By the Court: Are you able to make an estimate? Are you able to make an estimate?

A. I would say three to four lengths, your Honor.

Q. By Mr. Cluff: Three to four lengths?

A. Yes, sir.

Q. All right.

Mr. Adams: When was this three to four lengths?

A. That is after she became visible.

Q. By Mr. Cluff: My question was when he first made her out.

(Testimony of Lloyd A. Harris.)

Q. By the Court: You say three to four lengths when you first saw this black mass in the distance?

A. That is—no; after, after I was able to discern it as a ship. In fact, my eyes—I suppose, just the length of time it took me to make out from the mass to the ship was the time it took my eyes to focus from a mass to a ship. The thing that made it look to me as a ship was the fact that I made out the emblem on the side of the boat.

Q. By Mr. Cluff: This emblem you refer to is this, showing you “Olympic” 6, this like a red dot or a red or black dot with white background?

A. That is right.

Q. You recognize that as what you saw?

The Court: What is that, a target?

Mr. Cluff: I think it is the Japanese merchant flag. Isn't that right, Mr. Adams? [173]

Mr. Adams: I am sorry, I missed what you called my attention to.

Mr. Cluff: The single dot, without the rising sun stripes, is the Japanese merchant insignia as distinguished from the Navy, isn't it?

Mr. Adams: I am not certain, but it was the insignia for the “Sakito Maru”.

The Court: It looks like a target, doesn't it?

Mr. Cluff: It certainly does.

Q. And, as I understand it, shortly after you made her out as a mass, you identified her as a ship. Could you see which way she was heading then?

A. Well, it looked like she was heading just a

(Testimony of Lloyd A. Harris.)

little, would probably be on past the "Olympic" to the westward.

Q. On past the "Olympic's" bow?

A. That is right.

Q. Could you form any estimate of her speed?

The Court: What does this witness know about the speed? A. Well, I don't know.

Mr. Cluff: What is that?

A. I don't know how—

The Court: I don't know how this witness is in a position to estimate its speed.

Mr. Adams: I take it this question calls for a yes or no answer, whether he could form an estimate?

Mr. Cluff: That is all right. Put it this way: [174]

Q. Can you form, or could you form and did you form any idea of the speed at which the "Sakito" was moving along there after you saw her?

A. I really couldn't, on account of I would have to have some object to know my distance to the object that she was.

Q. Do you know the full speed of the "Pat"?

A. No; I don't. I am not familiar with it.

Q. She was not your boat and you were just a guest aboard? A. That is right.

Q. So you did not make and cannot make any estimate of the "Sakito's" speed as she approached you? A. No; I couldn't.

Q. As you approached the "Olympic", as you

(Testimony of Lloyd A. Harris.)

described, could you still hear the bells from the "Olympic" ringing? A. That is right.

Q. Ringing peals, as you described there?

A. That is right.

Q. Did you see the "Sakito Maru" make any change in her course?

A. I don't know whether it was a change or optical illusion of the fog, but it did look like they came in a little closer, if anything. In other words, it turned out toward another quarter somewhat like this, and then it faced around a little bit like that.

Mr. Cluff: The witness indicating by moving his hand to [175] the right.

Q. That is, did the turn appear to be to the "Sakito's" right or left?

A. Well, if it continued like it looked to me when I first saw it, it surely would have passed to the westward of the "Olympic".

Q. Yes. Then the turn back was in toward the "Olympic", closer toward the "Olympic"?

A. It seemed to, just whether it was a turn or what.

Q. When she made that turn how far away from the side of the "Olympic" did she seem to you?

A. Well, it was quite a distance.

Q. In lengths of the "Sakito", or any other standard that you can think of?

A. Well, around possibly four to five lengths maybe.

Q. Four to five lengths?

(Testimony of Lloyd A. Harris.)

A. Something like that.

Q. By the Court: Of the "Sakito Maru"?

A. Yes.

Q. I thought you didn't see it until three or four lengths.

A. Well, it is three or four lengths, that is right.

Q. I know, but you said you didn't see it, I believe, until it was three to four lengths away.

A. Possibly.

Q. Now you say that she made this change five lengths [176] away.

A. That is rather confusing.

Q. There is something wrong there some place on your figuring.

A. That is right.

Q. What is it?

A. I would say that it was three to four lengths like I formerly stated.

Q. By Mr. Cluff: At the time she seemed to make her turn?

A. Yes; very soon after I saw it.

Q. Did you notice any change in the ringing of the bells on the "Olympic" about the time that this turn appeared to you?

A. No; I can't say that I did at the time.

Q. Did you notice them any stronger up to the time of the collision?

A. Yes; before the collision.

Q. What happened then?

A. Well, there was a continuous rapid ringing of the bell.

(Testimony of Lloyd A. Harris.)

Q. That is, the peals speeded up and it was a steady ringing?

A. It rang continuously; yes, sir.

Q. With reference to the collision about how long before the collision did those continuous peals start? [177]

A. Possibly two lengths.

Q. Possibly two lengths?

A. Maybe a length and a half and maybe two lengths.

Q. Did you hear any whistle there or other signal from the "Sakito Maru" after she came in sight?

A. Yes; just about the time of the impact.

Q. And then what did you hear?

A. There was either one or two blasts once, I remember, I am not sure.

Q. One or two, you can't be sure?

A. There may have been more and they may have been continuous.

Q. How close to the "Olympic" was the "Sakito Maru" at that time?

A. Just about the distance in the court room, I would say, possibly this way, maybe closer.

Q. As you were watching the "Sakito Maru"?

A. We were——

Q. Pardon me. Have you something to add?

A. Well, we were off to the side a little bit and I couldn't get a view of it exact.

Q. As the "Sakito Maru" approached the "Olympic", as you describe it, did you at any time see any man on this forecastle head, and that is this

(Testimony of Lloyd A. Harris.)

high part of the bow here which goes up to an extreme point right at the very bow? Did you see any man standing up there with, say, from above [178] his waist above the top of this bulwark?

A. Before it hit?

Q. Yes. A. No, sir.

Q. You are quite positive that you didn't see anybody on the forecastle head or anywhere on the forward deck? A. No; I did not.

Q. After the impact did you see anybody anywhere?

A. After the impact I saw—I can remember of seeing one man.

Q. What was he doing?

A. He was running. I believe he was along in this position, just about in here.

Q. Indicating about the——

A. I think he came into view right just about in here at the top.

Q. That is, indicating the after end of the fore-castle head. In which direction did he seem to be going, toward the bow or down again? Indicating that he was approaching toward the bow?

A. Yes, sir.

Q. Did you see him go up the stairs or ladder, whatever it is that goes up there to the location?

A. I believe he was right up here at the time that I saw him.

Q. You saw him just about at the break of the fore-castle [179] head? Your answer was what? Just about here?

(Testimony of Lloyd A. Harris.)

A. Yes; he was there, just coming up, or was coming up there. That drew my attention, the movement.

Q. Were you able to see they way the "Olympic" reacted to the crash? A. In other words—

Q. That is, did you see what the "Olympic" did when they hit? A. Yes. It seemed to tip.

Q. Tip which way? A. To the right.

Q. To her right? A. That is right. [180]

Q. Did the "Olympic" move any?

A. It swung or pushed forward, one way or the other. It pushed on.

Q. In what direction?

A. To the north, ahead of the—

Q. In the direction of the "Point Loma"?

A. Yes; that is right.

Q. About how far would you say?

A. Well, pushed it far enough that we were able to see astern, or possibly just a little bit past the stern.

Q. After the collision could you see the starboard side from where you were?

A. That would be the left side?

Q. The "Olympic's" starboard side or right-hand side?

A. I couldn't see the right-hand side after the crash, after it had stopped pushing or just before it went down.

Q. After the "Olympic" came to rest following

(Testimony of Lloyd A. Harris.)

the collision did you see the boats separate, the two ships separate? A. Yes.

Q. Could you see the "Sakito's" screws on her stern, as to whether they were turning?

A. I didn't look towards the back. I just kept watching the front to see what was going on.

Q. How did the vessels separate? Did they come [181] apart and the distance between them keep increasing?

A. It seemed as though it had backed up, or I suppose it had backed away, and as soon as it began to part there was a foot or two of clearance and the "Olympic" went straight down. The other boat——

Q. Can you tell us how far the "Sakito" had moved from the "Olympic" before the "Olympic" went down?

A. Well, a very slight distance. Possibly just a very few feet. Two or three feet, maybe, of light between them, if there was that much.

Q. Possibly two or three feet. Did you hear any noise, or was there any disturbance of the "Sakito's" structure as she pulled away from her?

A. Well, there was a crunching sound.

Q. There was a crunching sound as she pulled out?

A. But whether there were any disturbances, I didn't notice that particularly.

Q. You didn't see any disturbance?

A. No; not that I recollect.

(Testimony of Lloyd A. Harris.)

Q. As the "Sakito" approached the "Olympic" could you see if she was throwing a bow wave or, as they say, had a bone in her teeth, white water boiling up around the bow as she moved?

A. No; I didn't notice that.

Q. Have you done much fishing around the San Pedro Bay area? [182]

A. Well, off and on, as sport fishing.

Q. For about how long?

A. Oh, about several times a year on the "Olympic"—I don't mean the "Olympic", I mean the "Rainbow".

Q. On the "Rainbow".

A. Yes; just mostly the "Rainbow".

Q. About how many years have you been doing that?

A. Five or six years possibly.

Q. Every year you have gone how many times have you fished around in the Horseshoe Kelp area?

A. Oh, possibly 8 or 10 times in a year.

Q. And that would be true for every year for 5 or 6 years? A. I believe so.

Q. When you fished in this vicinity tell the court what you have seen of other vessels fishing around in that neighborhood.

Mr. Adams: If the court please—

The Court: The same objection. It will be understood this is subject to the same objection made to the same line of testimony of other witnesses. You may answer the question.

(Testimony of Lloyd A. Harris.)

A. Well, there are just about—I wouldn't know to describe it—a few live bait boats, as a usual thing. I think there are some regular live bait boats that fished those waters there.

Q. By Mr. Cluff: How about sports fishermen? [183]

A. Lots of sports fishermen, especially Sundays and holidays.

Q. Yes. On each occasion you have seen a great many boats out there in that area where the barges are anchored?

A. I usually went on a week day. I seldom picked a Sunday or holiday.

Q. You have been out several times on Sundays as well as week days?

A. Yes. I usually got one or two, but most of the times I would pick a week day so the crowds were not so big.

Mr. Cluff: That is all.

The Court: Gentlemen, I think we will take our recess until 9:30 o'clock tomorrow morning, gentlemen.

(Discussion by court and counsel as to probable duration of trial and procedure as to depositions omitted from transcript.)

(Whereupon an adjournment was taken until Wednesday, September 17, 1941, at 9:30 o'clock a. m.) [184]

Los Angeles, California, Wednesday,
September 17, 1941, 9:30 a. m.

(Appearances have been heretofore noted.)

LLOYD A. HARRIS

recalled.

The Court: Proceed, gentlemen.

Mr. Adams: If the Court please, I have one or two preliminary matters to raise. I intended to do this yesterday. As the Court knows, there are two libels filed here against the "Sakito Maru", covering the same radio equipment. I understand that counsel have gotten together on it and are going to proceed only on one libel, and in that case, I move the dismissal of the other libel. I understand they are going to proceed on the libel filed by International Broadcasting Company. The other libel is filed by George Berger. I think the Court will recognize the inequity of our having to keep posted bonds on two suits which represent——

The Court: Are counsel here?

Mr. Fall: Yes, your Honor. Mr. Briney represents Mr. Berger. Mr. Briney is away this week. I told Mr. Adams that we had come to an arrangement whereby one of these libels will be dismissed. Mr. Briney will not be back until the latter part of the week, and as soon as his return we will dismiss one of them. So that, if the matter of a week

(Testimony of Lloyd A. Harris.)

will not make a great difference, I hope that counsel will withdraw his motion until that time and we will enter into a stipulation with [185] reference to it.

The Court: Does the matter of a few days make any difference?

Mr. Adams: Well, I suppose not. You expect Mr. Briney back before the session closes at the end of this week on Friday?

Mr. Fall: I think he should be back by then. If he is not, I know he will be back before next Monday.

Mr. Adams: With the understanding that one of the libels will be dismissed by next Monday——

Mr. Fall: Yes.

Mr. Adams: And the bond may be exonerated at that time?

The Court: Yes; when the dismissal is made one bond will be exonerated and there will be some money for counsel.

Mr. Adams: Thank you. There is one other thing, if the Court please. I do not wish to inquire, out of order, into the Court's business and I am wondering when we might expect a ruling on the motions to dismiss the actions of rem on the death claims that were filed in rem.

The Court: I have not had an opportunity to go into them as yet.

Mr. Adams: I see.

The Court: And this week I have not had an opportunity.

(Testimony of Lloyd A. Harris.)

Mr. Adams: Yes; I realize that.

The Court: And I really wanted to hear the evidence before I did rule on them, so there would not be any likelihood [186] of doing anybody injustice.

Mr. Adams: I wanted to call the Court's attention to the fact that we filed reply memorandums on Monday.

The Court: Yes; but I have not had an opportunity to go into the matter. I might state, what would be the objection in the proceedings immediately following this, as long as counsel all are represented, to proceed to hear the evidence on the death claims?

Mr. Adams: Well, one notable objection, it seems to me, is that until the Court has decided the issue of liability, none of us will know exactly who is interested in resisting such evidence. And I am frank to say that I had contemplated, from what the Court had previously announced, that—

The Court: In other words, you would not be ready?

Mr. Adams: Would not be ready; yes.

The Court: I have read 250 pages of the depositions since we adjourned last evening, and before we get through with this we are going to have one of these charts—I think 5101, in evidence, with the markings on it, with the course of the "Sakito Maru", and the location of the boats, and also the location of the wreck?

(Testimony of Lloyd A. Harris.)

Mr. Adams: I intend, if the Court please, to introduce in evidence the working chart of the "Sakito", with the exact markings on it.

The Court: The deposition shows the course of the "Sakito Maru". I have examined some of the maps, but they are just [187] maps; but I felt that somebody that is capable to do so, and counsel should get together on it and chart the course of the "Sakito Maru", and the location on the map as to where the collision took place. "Olympic's" Exhibit No. 6, I believe it is, sets forth the location of the three barges. In other words, as I understand the testimony, going into your case, the defense, the course of the "Sakito Maru" has been definitely located by the Coast Guard, and the divers who have gone down, and part of the wreck has been dynamited, so the exact spot should be designated on the map, so the Court can look it over with some detailed understanding.

Mr. Adams: I appreciate exactly what the Court has in mind. It is further our intention, as soon as we get to our proof, to introduce this map, and then ask that the markings that have been made on similar maps, supplied by other witnesses, indicating the location of the wreck, and also the "Olympic" prior to the wreck, be transposed on this one chart, and in that way the Court will have before it on one chart the various locations given of the vessels and the course and so forth.

The Court: Another thing the Court is inter-

(Testimony of Lloyd A. Harris.)

ested in, and that is, it is your contention that it is in the ordinary, you might say, stream of travel——

Mr. Adams: That is correct.

The Court: And the Court is interested in the area there in which the vessels do pass in entering and leaving the har- [188] bor, going south, and coming from the south, and whether or not it is an area that is more or less confined, and whether it is a wide area that they have to enter. The map, of course, would indicate that this happened in the open sea, with plenty of space all the way around, and yet the testimony of the Coast Guard indicates a more or less definite stream of travel; I presume you would call it a stream, instead of a channel. It is the usual course a vessel takes, according to this testimony, of 340 degrees——

Mr. Adams: Approaching Los Angeles harbor, 160 degrees, and leaving Los Angeles harbor. We will demonstrate that a vessel leaving Los Angeles harbor on a regular course of 160 degrees true will come within that area, and we will demonstrate that it will pass close to the location of the barges, the proximity of the passing depending to some extent on the point of departure, which might be any point in the opening to the outer harbor, inasmuch as there is a breakwater on the shore side, and an extension of that breakwater, and it would be depending on where the vessel happened to go through that opening and set a course of 160 degrees true. The proximity in passing the barges would depend

(Testimony of Lloyd A. Harris.)

upon that, and also upon the currents, and other factors which influence the ability of a vessel to maintain an exact true course, which, of course, never happens. I will stipulate with counsel that 5101, the "Sakito" working chart, which they were using at the time, may be put in evidence right now; also the evidence of the [189] Coast Guards.

The Court: I am making this inquiry as the case is unfolding. I am interested also in the evidence as to the exact length of time that the barges have been anchored out there.

Mr. Cluff: We will have evidence to that effect.

Mr. Adams: I might state that there is a chart, I believe, that is in evidence indicating that, introduced in connection with the deposition of Lieutenant Hewins. That is my recollection. Is this attached to the Monahan deposition?

The Court: I haven't seen the Monahan deposition.

Mr. Adams: I might state, if the Court please, that there are two charts which might be referred to; that is the more detailed chart showing the area of the Los Angeles harbor——

The Court: Does this red line represent the course of a vessel approaching from the south?

Mr. Adams: No. If the Court please, as explained by Lieutenant Hewins, the red line represents the course of vessels——

The Court: I examined one of these, and tried to figure it out.

(Testimony of Lloyd A. Harris.)

Mr. Adams: May we introduce, if Mr. Cluff is willing to stipulate, the working chart of the "Sakito Maru" so that the Court may have it?

Mr. Cluff: If you care to, I will lay down the course of 340 true on this chart here.

Mr. Adams: I might say that we would like permission to [190] withdraw this chart, because the captain is arriving late this afternoon, and I would like, of course, to talk to him, referring to the chart during the conversation.

The Court: You need not introduce it then.

(Discussion off the record.)

Mr. Cluff: I have just one or two questions to add to my direct examination.

Direct Examination

resumed.

By Mr. Cluff:

Q. Mr. Harris, after you came to anchor, about the time you heard the "Sakito Maru's" first whistle, could you see the "Rainbow" barge?

A. It could be very dimly made out, being as that I knew it was there; and I really——

Q. And could you see it?

A. Yes; it could be dimly made out.

Q. After the collision and after the sinking of the "Olympic", you and Mr. Jones, in the "Pat" and the gentlemen, the men on the "Marell", circulated around there, looking for survivors for quite a while?

A. That is right.

(Testimony of Lloyd A. Harris.)

Q. And were there other boats in the vicinity, other small craft like the "Pat", fishing boats?

A. Yes; I think the two boats that were alongside, and a little later another boat come on the scene, oh, quite a large fishing boat; but I think they cruised by very slowly, but I [191] think it stopped a few minutes—I am not sure—before the Coast Guard.

Q. Do you remember the Coast Guard cutter launch "Hermes" coming out there?

A. That is right.

Q. And she launched a life boat and they joined in the search? A. Yes; that is right.

Q. Do you remember the officer in charge of the life guard boat pulling up to the "Pat" and having a conversation with you and Mr. Jones?

A. No.

Q. Did you have any talk with the officer in the life guard boat?

A. I don't remember whether I did or not. I answered a few questions for him, I believe, but just what they were I don't remember.

Q. Was that while you were cruising around there in the water? A. Yes.

Q. Did that officer ask you or ask Mr. Jones, in your presence, to state what you knew about the thing, and did either of you state that you were about half a mile southeast of the "Olympic" and couldn't see her? A. Not that I remember.

Q. But that you could hear her bells and that

(Testimony of Lloyd A. Harris.)

you saw the [192] "Sakito" pass you shortly before the collision?

A. No; I don't remember making that——

Q. No such conversation took place in your presence?

A. No such conversation like that at all.

Mr. Cluff: That is all.

Cross-Examination

By Mr. Adams:

Q. Mr. Harris, you were a guest, I take it, on the "Pat"?

A. Yes, sir; that is right.

Q. The "Pat" is owned by Mr. Jones?

A. Yes, sir.

Q. Have you had any experience at sea?

A. No, sir.

Q. Going aboard any vessel?

A. No; just the few times that I had went fishing. I had went fishing a good many times in the few years I had been out here; but otherwise, no sea experience.

Q. Have you ever made any study of navigation or anything of that nature?

A. No; I haven't.

Q. Referring to this diagram, which is "Olympic" Number 4, and particularly to the sketch that you drew of the "Pat".

A. I am sorry, I didn't draw that sketch. Mr. Jones did.

Q. Oh, I am sorry. Did you state that this sketch, drawn by Mr. Jones, of the "Pat" and

(Testimony of Lloyd A. Harris.)

that diagram substantially [193] indicated the direction in which the "Pat" was lying?

A. I believe it was more to this side.

The Court: He testified that there was a different angle there.

Mr. Adams: I see.

A. I was fishing from the left side of it, and by standing on the left side, I could look directly over and see the "Olympic"; so therefore, I think that this must have been in a position more like this. It could have swung—swung back and forth. You see, it is a very small boat and it is subject to quite considerable swing back and forth.

Q. Do you recall whether—

A. But I believe in the general direction it was heading more this way, if that is the bow of it here—I am not sure. I believe it is.

Q. Yes; the bow is indicated by the line which is supposed to indicate the line running to the anchor. A. I see.

Q. The direction which you say you believe it was is the direction similar to that shown for the "Marell" which is designated by "M" on this diagram?

A. Yes. Yes; I do believe that it is.

Q. Do you recall whether the bow of the "Pat" was headed in the direction of the "Marell" or headed in the opposite direction?

A. It was headed away from this, I am quite sure. [194]

(Testimony of Lloyd A. Harris.)

Q. I see.

A. Because when I watched the crash, then as soon as it hit, I knew the thing to do was to get over there and give assistance if possible. So I went up forward to pull up the anchor and I glanced back over my shoulder to see what the boys up there were doing. Therefore, I must have been facing away from the "Pat" this way.

Q. Was the "Pat" riding at anchor then in about the same direction as the "Marell", shown on this diagram?

A. Yes. I would say more so than it is here, to the best of my knowledge.

Q. Was the "Pat" in line with the "Marell", or was it further away from the "Olympic", that is, further to the stern of the "Olympic"?

A. No. It was off in this direction and very nearly this direction from the "Marell".

Q. I wonder if you would just superimpose on that drawing the "Pat", showing her heading in the direction in which——

The Court: Just make an arrow there with a line.

Q. By Mr. Adams: All right; just make a line with an arrow.

The Court: The way you saw it.

A. Well, I believe it was lying more in this—possibly in this direction.

Mr. Adams: I see. Will you put an arrow to that.

(Testimony of Lloyd A. Harris.)

Mr. Cluff: Just put your initial "H" in front of that [195] arrow so we can identify it.

A. To the best of my knowledge, I was fishing from the left side.

Q. By Mr. Adams: That would be the side nearest the "Olympic"?

A. That would put me on this side, yes; with the rear of the little boat to my left. I was standing, looking over this way. I knew I had stood up fishing, and only fished a little while, and I noticed the people arriving in the shore boat.

Q. What do you estimate the distance to be between the stern of the "Olympic" and your vessel, the "Pat"?

A. Well, that has been more or less of a guesswork, and later on, since I thought more about it, I estimate it to be around the length of the "Olympic" or possibly a little greater; just about the length of the "Olympic" boat.

Q. The length of the "Olympic" boat is——

Mr. Cluff: 258 feet.

Q. By Mr. Adams: The length of the "Olympic" is 258 feet. Does that sound to you——

A. If I remember right, there was a buoy right along in here. I am not sure just exactly where it was, but it was right off here.

Q. Did you know where the buoy marking the stern anchor of the "Olympic" was?

A. I had been out a time or two before and we used to fish out there, and I believe it was some-

(Testimony of Lloyd A. Harris.)

where right along in [196] this locality. I am not certain about it.

Q. Could you mark that with a dot?

A. Well, I am so uncertain as to just the location, I would hate to.

Q. The place you are indicating now is somewhere between the "Marell" and the "Pat", is that correct?

A. Yes. It seems as though it would be in there. Whether it was or whether it wasn't, I don't know. It is so indefinite in my mind that I couldn't put a mark on there for you with any justice to you or myself or the Court.

Q. I see. Do you recall the exact time that you arrived there and got your anchor out?

A. I don't know that. You mean when I arrived at that location there?

Q. Yes, yes.

A. No. I don't remember of paying any attention.

Q. Do you have any approximate idea?

A. Somewhere, I would say, around seven o'clock or a little before seven, just at a rough guess.

Q. Did you notice any shore boats arrive at the "Olympic" and discharge passengers?

A. Yes; I think there was—I know that there was one had discharged passengers shortly before and——

Q. How do you know that? Do you mean shortly before you came to anchor?

(Testimony of Lloyd A. Harris.)

A. No; shortly after we come to anchor. [197]

Q. I see.

A. And whether or not there was the second one, it is now too dim in my mind to remember. But I do remember the one, and quite a few people getting off.

Q. Let me ask you this: When you arrived and anchored, and before this shore boat came to the "Olympic" that you remember seeing, did you notice any people aboard the "Olympic" fishing or getting ready to fish?

A. I believe there was some people on the boat fishing.

Q. Before this boat came that you remember?

A. Yes.

Q. I see. A. Yes; I believe there was.

Q. Did you see any boat come after that boat came that you distinctly remember?

A. I am not so sure whether or not it was a passenger boat. I believe there was another boat pulled up, but whether it was their tender pulling up or a bait boat or just what, I don't know. But I do know there was another boat. There was two boats there I can remember of, and I believe one pulled out and stopped about in a position on something like that, while the other one, I believe the other one got out of the road for the other one to come up. What they did I don't know. But I am sure—I know that the one passenger boat brought passengers, because I could hear them talking and would notice them getting on and off. [198]

(Testimony of Lloyd A. Harris.)

Q. Do you think that there were any more than four people that disembarked from that boat that you saw? A. Yes; I believe there was.

Q. Do you think there was as many as eighteen people?

Q. By the Court: Well, do you know how many people were on board the boat?

Mr. Adams: What I was trying to get, if the Court please, is some indication as to whether the witness was thinking of the first boat or the second boat. The first boat had eighteen people and that second boat had four people.

A. It was more than four, I am quite sure it was. I am not too positive, but it seems to me there were several people. There were two or three rather light colored suits or people without coats, in shirts. I don't know just which it was.

Mr. Cluff: May I suggest a question, Mr. Adams, that I think will clear that up?

Mr. Adams: I beg pardon?

Mr. Cluff: I say, may I suggest a question which I think will clear that up?

Mr. Adams: Yes.

Q. By Mr. Cluff: Did you see the first boat go away again before the collision?

A. There was one boat pulled away, I think, to make room for the other one. I don't think it left.

Q. Was that before the collision and before the "Sakito [199] Maru"?

(Testimony of Lloyd A. Harris.)

A. Yes; to the best of my recollection.

Q. That you saw one boat pull away?

A. Yes; I am sure.

Mr. Cluff: I will offer to stipulate that the "Grant" arrived about 6:45, discharged a number of passengers— I don't know whether it was 18 or 14, quite a few; the "Lillian L" got there, according to his time, at 7:05 and had four passengers. She was alongside at the time of the collision.

Q. By Mr. Adams: Do you believe, Mr. Harris, that you had been at anchor there as long as five minutes before the collision?

A. Yes; I think we had. I am quite certain we had been there more than five minutes.

Mr. Cluff: Of course, that is according to the "Lillian L's" time, Mr. Adams. That is not the "Sakito's" time.

Q. By Mr. Adams: Can you tell us approximately how long you had been there prior to the collision? What is your best recollection on that as to the length of time you had been there before the collision happened?

A. Well, possibly, variations one way or the other, fifteen minutes.

Q. I see.

A. Would be about as near as I can tell. It could have been twenty minutes, but I doubt it.

Q. After you came to anchor did you get your fishing [200] tackle ready to start fishing?

A. That is right; we did. [201]

(Testimony of Lloyd A. Harris.)

Q. And did that occupy some time?

A. It did.

Q. As I understand your testimony, you heard a sound which you did not at that time definitely identify as a whistle of a vessel?

A. That is right. As near as—we wasn't paying very much attention to it, but it merely called our attention that it might have been a whistle.

Q. Do you know how much time had elapsed since you came to anchor there when you heard this sound? Can you give us any estimate on that?

A. Well, I couldn't say for sure, but it seemed like soon after.

Q. That is the best you can tell us?

A. Yes. I went up forward and put the anchor down for Mr. Jones and I believe it was after that. I believe that—and I had come back—I believe that it was that we heard, which we didn't know whether it was a horn or warning signal or just what-not.

Q. How long was it after that, if you can tell us, that you heard a sound which you definitely identified as a whistle? Do you have any idea?

A. Well, I was trying to estimate the time that I put my reel on the pole, threaded the line through, made it fast to the leader, baited the hook and started fishing. Well, it could have been three or four minutes; it could [202] have been. It is indefinite in my mind how long it could have been.

(Testimony of Lloyd A. Harris.)

Q. You are not able to give us a very accurate estimate? A. No; I couldn't.

Q. Did you hear the sound which you did not recognize of a vessel before you started fishing?

A. I think about the time that I was making up my fishing tackle.

Q. I see.

A. As near as I can remember. It has been so long ago it is——

Q. How much time, if you can give us this figure, elapsed after you heard the sound which you recognized as a whistle before you actually saw any object which later turned out to be the "Sakito Maru"?

A. Well, it was quite soon afterwards, I think, as well as I remember.

Q. Can you give us any sort of an estimate, or are you not certain of it?

The Court: Counsel, this witness' testimony as to times, so far as this court is concerned, his estimates are of little value because he is honest with you and he tells you that he can't figure the time, and as near as he can tell you it is soon; and I don't think you should try to pin him down to the time when he is not able to give it and [203] can't. It would not be worth much to the court in view of his testimony.

Mr. Adams: If the court please, I agree with the court, but I am endeavoring to do just the opposite. I don't think the witness is certain on it

(Testimony of Lloyd A. Harris.)

and I just wanted to demonstrate on cross examination that he doesn't—

The Court: Well, you have demonstrated to my satisfaction.

The Witness: There is nothing in the world that I would rather do than to give the exact times.

Mr. Adams: I realize that, Mr. Harris.

The Witness: And if I had had a camera, I wish I could have taken some pictures.

Mr. Adams: I realize that, Mr. Harris. I am not quarreling with you on that.

The Witness: I understand.

Q. When you first saw the "Sakito Maru" what impression did you receive? Can you give us a description of the object that you saw when you first saw anything?

A. Well, as I looked out, how I looked out would be to my left, there were more or less of a moving object which, when I stopped and focused my eyes on, I was able to make out that it was a ship.

Q. What color was that object that you first noticed? A. It was a dark object.

Q. Did it seem to be black? [204]

A. Yes; which, in a very few seconds, resolved itself into a ship as my eyes—

Q. As you continued to watch it more of it became visible?

A. Well, it was pretty much visible. As soon as I made out that it was a moving object it was pretty much visible.

(Testimony of Lloyd A. Harris.)

Q. You know what the term "superstructure of a ship" means, don't you, the housing on the deck?

A. Yes; that is right.

Q. When you first saw this object were you able to distinguish clearly the superstructure of the "Sakito Maru"?

A. I wouldn't say clearly at all; just, I believe, that it come into sight approximately the same as the rest of the ship did.

Q. Did you notice the masts of the vessel?

A. What took my attention was the markings.

Q. The flag or emblem?

A. The emblem, or whatever it may be.

Q. Do you have any recollection of having seen clear to the top the masts at that time?

A. Right immediately I don't remember having sighted the height of it. I did very shortly after.

Q. As it came closer to the "Olympic"?

A. Yes.

Q. You were able to distinguish the masts? [205]

A. I didn't think it was—I thought surely they would see it and veer off, and I didn't pay as much attention to it as I wish now that I had of.

Q. By the Court: In other words, when you first saw the boat you did not sense any danger?

A. No; I didn't, your Honor, because I thought surely, the distance they had, that they surely would see, because, after all, the "Olympic" presented itself as a broadside, which necessarily would give them a better view of it than if she was narrow.

(Testimony of Lloyd A. Harris.)

Q. When you saw the "Sakito Maru" it was coming directly towards you; you saw the bow of the ship?

A. Well, no; not exactly directly. It was more indirect, at less an angle.

Q. It was more of a side view?

A. That is right.

Q. I wonder if you could indicate on this diagram, Mr. Harris, where the "Sakito" was when you first saw it, and indicate by a line and arrow the heading of the "Sakito", as she appeared to you at that time?

Mr. Cluff: Is counsel referring to "Olympic" Exhibit No. 4?

Mr. Adams: Yes. Do you think you can do that?

A. No. You see you have got me out of my element. If I got in a smoky room I might be able to get around, but not in the fog. [206]

Q. I realize that.

A. I wish I could accurately enough, so to speak, inform you.

Q. Would you be able to state whether or not the "Sakito Maru" seemed to be approaching the "Olympic" at right angles?

A. Do you mean directly?

Q. Yes, to her port side.

A. I don't believe it was. Right at first, of course, it could have been, I guess, more or less of an optical illusion, I believe, in the fog.

Q. Do you also think the perspective you had

(Testimony of Lloyd A. Harris.)

might have had some influence upon what you thought was the heading of the "Sakito"?

A. It is not impossible. I believe that it presented more of a front view a little later than it did just at the time when I first saw it, but I couldn't definitely state.

Q. After the impact, did you continue to watch the two vessels? A. As nearly as I could.

Q. And did you see any movement on the part of the "Olympic" after the "Sakito" struck the "Olympic"?

A. Yes, it was pushed quite a distance.

Q. You estimated that distance at what?

A. I don't know whether I estimated the distance, or [207] not, that the boat pushed it, but in our range of vision it swung it far enough—I think it pushed the stern of it—it was far enough that we could see the side that was damaged.

The Court: You could see the side that was damaged?

A. That is right, your Honor.

Q. By Mr. Adams: Could you see the starboard side? Were you far enough back so that you could see both sides?

A. No. The starboard side would be right?

Q. Yes.

A. No, we were unable to see it. What makes me certain I was unable to see it, the boat that was alongside of it, it was beyond our view.

Q. Will you please describe, when the "Sakito"

(Testimony of Lloyd A. Harris.)

separated from the "Olympic", with reference to the time that the "Olympic" ceased to move through the water, that is, came to a stop, or do you have any definite recollection of that feature?

A. I believe that they came to a stop about the time that I started to pull up anchor; about that time. I had to go up forward in the boat to pull up the anchor, and I believe by that time the forward movement had stopped.

Q. When, with reference to the time the forward movement of the "Olympic" stopped, did the "Sakito" seem to separate from it?

A. That is what I tried to figure out. I think by [208] the time I had the anchor about half way up, something like that, I believe they had started to separate.

Q. I believe you testified on direct examination that from where you were, that is, close to the surface of the water, the "Olympic" seemed to drop from the bow of the "Sakito"?

A. As it pulled away it seemed to slide down off, like it was sliding down off of a plane, and then broke away.

Q. Did the "Olympic" then continue to settle slowly in that downward movement?

A. It gained momentum as it backed—as the "Sakito" backed away, it seemed it released it, and it started slowly, seemed to slide off right on down; the nearer the water, the faster it went.

Q. Do you know what the rake of a ship is, the rake of the bow?

(Testimony of Lloyd A. Harris.)

A. I take it it is the angle the bow is built on, whether it projects forward or backward.

Q. Did you happen to notice the bow of the "Sakito", and determine whether she appeared to have a rake or not?

A. Yes. I estimated it cut half way through the "Olympic", on account of the position it pushed it, and it was so hit that it looked like it was standing about half way through. It could have been the rake that made it look more so. [209]

Q. What object of the "Sakito" seemed to penetrate farthest into the "Olympic"? Let me put it this way: What object of the "Sakito" extended farthest away for the port side of the "Olympic", the side that was struck? A. The top of it.

Q. How far did that seem to extend over the "Olympic"?

A. It looked to me like about at least half way.

Q. At least half way?

A. That is just a rough estimate.

The Court: Gentlemen, won't the evidence show how those markings appear on the "Sakito Maru"? Won't they show definitely how far she penetrated into the boat, and won't the markings show the physical facts?

Mr. Adams: Of course, that will be of some value. I suppose counsel will make some argument based upon that. It is to some extent speculative, because no one knows exactly what it was that caused these holes to be punctured in the "Sakito".

(Testimony of Lloyd A. Harris.)

The Court: Not only the holes; I notice in these exhibits it shows markings, back in the bow; for instance, undoubtedly when the bow of the "Sakito Maru" penetrated the "Olympic" it left markings and you ought to be definitely able to ascertain that. I think that this evidence is of vital importance to the court, that it, the extent that the boat was penetrated. I think it solves the question that you have raised here about these bulkheads. [210]

Mr. Adams: That is correct.

The Court: If the boat was not seriously damaged, the location of the bulkhead, it seems to me, would be far more important than, say, if the boat was cut half way in two, the bulkhead would not have been of any particular avail, if they had been there.

Mr. Adams: We intend to demonstrate that very clearly and fully.

The Court: Another thing, this witness, from the distance, and the shape of the boat, it would be pretty hard for him to say how far that penetrated in there, and it seems to me, so far as I recall, the physical markings on the "Sakito Maru" would definitely establish that. In other words, there could not help but be markings penetrating this iron ship, and leaving scars.

Mr. Cluff: We will offer evidence of measurements made by Mr. Archibald, that it was something over 20 feet; about the line where the collision occurred.

(Testimony of Lloyd A. Harris.)

Mr. Adams: We have evidence on that. I was endeavoring to get a different point.

The Court: You may proceed.

Q. By Mr. Adams: I believe perhaps, Mr. Harris, you have answered the point I had in mind, in part at least: As the "Sakito" appeared to separate from the "Olympic", I take it that the "Olympic" just gradually settled?

A. It seemed to slide, as it began to gain momentum, [211] and backed from the hole, it seemed to slide right down; in other words, it looked like it was a hand opening, and it released it. The further it came back, the faster it went.

Q. Did that seem to take place almost immediately when the "Olympic" came to rest in the water, after being pushed through the water?

A. No, there was an interval where it held, like it was just hanging up there.

Q. While it held hanging up there, was the "Olympic" tilted?

A. A little bit, I believe. I wouldn't say whether it had still tilted. It seemed like it might have been.

Q. It seemed like she might have been listing?

A. It could have been, a little, but I don't know.

Q. Do you know how long it held in that position before the "Olympic" started settling and the stem of the "Sakito" seemed to be separating?

A. About the length of time it took me to pull up the anchor.

(Testimony of Lloyd A. Harris.)

Q. Have you got any idea how long that was?

A. No.

Q. Were you pulling up the anchor in a hurry?

A. I wasn't wasting any time.

Q. How much chain did you have out?

A. I suppose around 130 or 140 feet; something like that. [212]

Q. What was the weight of your anchor?

A. That I don't know. I am not familiar with Mr. Jones' anchor. He possibly could tell you.

Mr. Adams: No further questions.

Mr. Cluff: I have no further questions.

The Court: That is all, call your next witness. [213]

ELWOOD JOHNSON

called as a witness on behalf of the libelant, being first duly sworn, testified as follows:

The Clerk: State your name.

A. Elwood Johnson.

Direct Examination

By Mr. Cluff:

Q. What is your business, Mr. Johnson?

A. I am in the service station business.

Q. You were a passenger on the "Olympic" the day of the collision with the "Sakito Maru"?

A. That is right.

Q. And you are a claimant and libelant in this

(Testimony of Elwood Johnson.)

case on account of the death of your son, as a result of that collision? A. Yes.

Q. Will you state, on the morning of September 4, 1940, how you went out to the "Olympic", and at what time?

A. We went out on a shore boat. We left the dock at 6:00 o'clock, I think.

Q. With reference to the collision, what time did you arrive at the "Olympic", as nearly as you can fix it?

A. Well, we stopped to get bait, and went on out.

Q. How long before the collision did you arrive aboard the "Olympic", as close as you can estimate?

A. I can tell you what I did from the time I got there [214] to the time of the collision.

Q. A matter of 15 or 20 minutes?

A. Yes, easy.

Q. Who was with you, Mr. Johnson, when you went out fishing?

A. Mr. McGrath, and his boy Jimmie, and Curtis and I.

Q. Your boy was how old? A. 18.

Q. Jimmie, McGrath's boy, was around 6?

A. I guess he was. I don't know how old he was.

Q. When you went out to the "Olympic" on the shore boat, as you approached the vessel, what kind of weather was it with regard to fog?

A. As we went out, left the breakwater, it was quite foggy.

(Testimony of Elwood Johnson.)

A. It was quite foggy past the breakwater?

A. Yes, past the lighthouse.

Q. As you went out, and approached the "Olympic", was there any change?

A. Yes, as we got out, away, we could see a barge, which we thought might be the "Olympic" barge, we were going to, but evidently it wasn't; it was the other one.

Q. The "Point Loma"?

A. The "Point Loma".

Q. How far was that barge away according to your judgment, when you first saw the barge. [215]

A. We went on up toward the "Point Loma", it seemed like, and I noticed he was not going to it, and it was not our barge, and we looked over, and we could see the other barge from the "Point Loma".

Q. On beyond the "Point Loma"?

A. Yes.

Q. When you first saw the "Point Loma", can you give us any idea about how far away it was; that is, when you first made out the "Point Loma" through the fog?

A. I wouldn't know exactly how far it was.

Q. Did the fog seem to be lighter than when you passed the breakwater, or heavier?

A. Oh, much lighter.

Q. As you boarded the "Olympic", did you see the third barge, which was called the "Rainbow" barge?

(Testimony of Elwood Johnson.)

A. That was lying astern of the other.

Q. Toward Long Beach?

A. I don't know.

Q. Did you happen to look for it? A. No.

Q. Did you see the "Point Loma", when you got aboard the "Olympic" barge?

A. I did not look.

Q. After you got aboard the "Olympic" barge, tell the court what you saw.

A. We crossed onto the other side of the barge. [216]

Q. You crossed to the other side from the gangway?

A. Yes, went down to the other end.

Q. Don't say you went down to the end, but state whether it was the bow end or the stern end.

A. Did we get on the stern end?

Q. The gangway is on the quarter toward the stern, yes.

A. If we got on the stern, then we went up to the bow end to fish.

Q. Let us see if we can fix it this way: When you were standing on the side, while you were fishing and looking toward the sea, when the collision happened were you to the right of the point where the "Sakito Maru" struck, or to the left?

A. To the right.

Q. Then you were toward the bow? A. Yes.

Q. Go ahead.

A. We got up to the bow—that's right, is it?—

(Testimony of Elwood Johnson.)

and we proceeded to get our fishing tackle ready.

Q. Just a minute, Mr. Johnson; maybe this will be a little helpful: I am showing you "Olympic" Exhibit No. 1, and I will ask you if you recognize that as the "Olympic" barge, on the side where you were fishing.

A. I wouldn't say as I would.

Q. You couldn't identify the ship?

A. No. [217]

Q. Assuming that this was the vessel on which you were fishing.

A. Assuming it was, we were right here.

Q. Just about at the foremast—the first mast?

A. Yes, right up here; I think on this railing, or pole, we put our lunch and poles here.

Q. Right down at the bottom?

A. Yes, I believe we were right here, like these four people are.

Q. Just between the break of the forecastle head and the foremast? A. Yes.

Q. You started fishing. Who were there with you fishing?

A. Curtis to my right, and Paul McGrath was next, and Jimmie next, down below him.

Q. Jimmie was the little fellow, the little boy?

A. Yes.

Q. By the way, had you known the McGraths before making this trip?

A. Yes, several years before.

Q. You were friends, and went out together?

(Testimony of Elwood Johnson.)

A. Yes.

Q. You took this position, and then did you start fishing?

A. We got our fishing tackle ready, and then had to go [218] to the bait tank, and get bait.

Q. That was toward the other end of the ship, the after end?

A. Yes. Then we got our bait, and then walked back again.

Q. Will you tell the court what sort of tackle you were using, how big a reel, and what length of line on it?

A. I had a 300-yard reel, with 200 yards of 9-strand line, with 70 yards of nylon on the end of that, with a 4-foot leader on the end of that.

Q. Go on and tell just what happened; just what you saw; what you saw from the time you prepared your pole, or whatever you did, and the collision.

A. I went back and got the bait and baited the hook, and cast out. The tide was running that way, and I kept pulling on my line, and I let my line go on out, and I got the line almost all of the way out. As I had 70 feet of nylon, I probably had 200 yards of line out, and I had a strike out there. I did not catch the fish, but I felt as if I had lost my bait, so I brought it back in again. I put the reel down, and I went and got another bait, and I came back and cast out again, and started to reel my line out. Then is when I saw the boat come through the fog.

Q. Before we get into that, do you have any

(Testimony of Elwood Johnson.)

recollection of hearing the bell ringing on the "Olympic" barge, as you approached her, or as you came on board, and were preparing [219] your fishing tackle?

A. While we were on the boat I remember that we heard bells, yes, but what bells they were I did not pay any attention to.

Q. You didn't pay any particular attention to the bells? A. No.

Q. You couldn't give me any description of how they were rung, or how often, or anything else?

A. No, I wouldn't know.

Q. You have told us about letting out your line the second time, after rebaiting it. A. Yes.

Q. Did you see anything during the course of letting out your line?

A. After I cast out, yes, I saw this boat coming through the fog.

Q. You saw the boat coming through the fog?

A. Yes.

Q. When you first saw that boat about how much line did you have out, according to your best recollection?

A. I had just cast it out. The line just started out. After you cast, you kind of look up, and about that time I think I saw the boat, and the line was already in the water.

Q. I am showing you this little diagram, "Olympic" Exhibit No. 6. This shape is supposed to represent the [220] "Olympic" barge. You have in-

(Testimony of Elwood Johnson.)

icated that your position was relatively about where you have made a little dot on her port side forward. I wonder if you would take my pencil, and indicate the direction from where you were standing where that boat first appeared to you?

A. Well, I would think the boat was right over in here, somewhere.

Q. You have marked with a cross, and I will write the name "Johnson" after that, so it appeared to you on a point to the left, and to the seaward of the "Olympic" from the position of her forward deck, where you were standing? A. Yes.

Q. Did the ship appear clear to you, or was it hazy?

A. When I first saw it it was just like some of the other boys mentioned; it was a black mass coming through like a curtain.

Q. Can you give us an idea of how far away it seemed to be?

A. Yes. Since I spoke and thought of it a lot, I am sure it was over a half a mile, probably three-quarters of a mile away.

Q. Later you got to see the shape very plainly, I take it? A. Yes.

Q. That ship was some 500 feet long?

A. Yes. [221]

Q. Do you have any idea how many of her own lengths away she was when you first saw her?

A. I couldn't decide that way.

Q. It is pretty hard to do. When you first saw it, did you have any apprehension of a collision?

(Testimony of Elwood Johnson.)

A. Oh, not at all.

Q. What did you do then, from the moment you first saw her?

A. I kept on reeling my line out.

Q. You kept on until you had let out how much line?

A. I think I almost had as much out as I had the other time.

Q. Approximately 200 yards? A. Yes. [222]

Q. Approximately all of it out? A. Yes.

Q. Did you continue to watch that vessel?

A. Yes, I told Curtis, "Here comes a big boat," and he said, "I saw it." He had already seen it coming in.

Q. He and McGrath were also fishing at the same time?

A. Yes. Red had just gotten the pole for Jimmy to fish.

Q. As you continued to observe this approaching ship—by the way, did you hear any whistles from her at that time? A. Not when I saw it.

Q. Did you hear any whistle before you saw it, down from that direction, or any direction?

A. Yes, it seemed to me when I was either getting my bait ready, or when I had the first line out, I heard a whistle over there. I remember distinctly hearing one whistle.

Q. Somewhere toward the south?

A. Somewhere there. I heard a whistle, yes.

Q. What did the ship seem to do after you first saw it as a black mass?

(Testimony of Elwood Johnson.)

A. When I first saw it I couldn't decide whether it was going to the right of us or to the left of us; I wouldn't know.

Q. You couldn't make out where her heading was? A. No. [223]

Q. Did it clear up shortly, so that you could see what her heading was?

A. Yes, it came right on out.

Q. How did it appear she was headed, could you tell?

A. It was not long after I saw it that I definitely made up my mind that it was going to pass to the right of us.

Q. As you were facing out seaward? A. Yes.

Q. Did you continue fishing?

A. I continued fishing.

Q. Go on and tell in your own way what happened.

A. It came on up here like this.

Q. You are moving with your hands. That does not make a record. If she changed her course, or anything, just say whether she changed to the right or to the left.

A. From the first time I saw it—

Mr. Adams: Just a minute. I object to the question as leading and suggestive.

The Court: I don't think that is leading. He is trying to make a line with his hand, and he is telling him to describe it, so that he can put in the record the direction he is indicating, with his hand moving to indicate the change.

(Testimony of Elwood Johnson.)

Mr. Adams: I am sorry.

Mr. Cluff: We might get at it this way, Mr. Johnson. Say whether she turned further away from the "Olympic", or [224] in toward the "Olympic." A. It turned toward us.

Q. When she turned toward you, how far away did she seem?

A. Well, it was still a long ways away.

Q. At that time did you have any apprehension that she was going to run into you?

A. No, not then.

Q. Was the turn made quickly, or did it take a little time?

A. No, it came out over there, and kind of angled.

Q. A sharp angle or a small angle?

A. No, just a sort of a long angle, over toward us.

Q. At that time did you make any change in what you were doing?

A. Not until after it got through the kind of an angle, and started coming over toward us more.

Q. By that time did it seem to be heading toward the barge itself?

A. No, I did not think so. I thought it was going to cross my line.

Q. You thought it was going to cross your line?

A. Yes.

Q. Which was out some 200 yards? A. Yes.

Q. Then what did you do? [225]

A. I started to bring it in.

(Testimony of Elwood Johnson.)

Q. Go on from there.

A. I started bringing in my line; as it came closer and closer I kept bringing it in and bringing it in, until it got—a lot of things went through my head at that time. I realized that the ship hadn't seen us, and I realized that it was going to come awfully close, but I still thought it would go past us. I knew it was going to be close. I kept winding until it got up quite a ways.

The Court: You say quite a ways. How far?

A. Several ship lengths out.

The Court: Could you see the ship clearly and distinctly?

A. Yes. The fog was very high, and the sun was shining through, and it was sort of gray; it was going to be a beautiful day.

The Court: You say you could see the ship distinctly several ship lengths away?

A. Oh, yes, and it started to make another turn in, I thought, toward us, and instead of going on past, it looked like it was coming closer toward us, and was going to pass us quite close. As it came closer I kept winding faster and faster, and then it got so close I thought it was going to sideswipe us. It didn't seem that they reversed the motors, or made any signs, and I was sure they didn't see us. As it got in front of us I said to the boys, "It is going to hit us," and we wound up our reels fast, and got our lines [226] in, and I said, "Grab hold of the rail," and we ran about 12 feet, and grabbed hold of the rail, and the boat crashed.

(Testimony of Elwood Johnson.)

Q. Could you form any estimate as to how fast that ship seemed to be coming as she approached, from the time you first saw it until she turned into the "Olympic"?

Mr. Adams: I object to the question upon the ground that no proper foundation has been laid; that it calls for the conclusion of the witness. I don't think this witness has been qualified by virtue of his experience at sea to judge the speed of vessels.

Mr. Cluff: I haven't heard, if the court please, that it takes any special qualification to estimate speed. It may be a matter of weight.

The Court: I don't know as to what particular value the estimate of the witness would be, unless he can show some qualification. I am going to admit the evidence for what it is worth.

Q. By Mr. Cluff: Mr. Johnson, could you see whether the approaching ship was throwing any bow water, or white water around her bow?

Mr. Adams: I object to that as leading and suggestive.

The Court: Overruled.

A. Naturally, when it made the turn sort of into the barge, I was quite interested in whether it was slowing up, or what it was going to do. It would seem naturally that it was really coming in, and it seemed to me that I could [227] hear the waves more than I remember seeing them, swishing through the water.

Q. You could hear the swish of the water?

(Testimony of Elwood Johnson.)

A. It seemed to me that it came—I had been up there by that Horseshoe Kelp many times, and I saw many boats going by, and I would say it was going as fast as the Catalina boats go by.

Mr. Adams: I move that the answer be stricken as non-responsive, and I move also that it be stricken upon the ground that there is no basis for comparison of the speed of the Catalina steamers.

Mr. Cluff: I will stipulate as to their speed, which you know as well as I do.

Mr. Adams: I know that once they went too fast, and were held at fault for doing it, but I don't think they are going that fast any more, so I don't know what their speed is. I move the answer be stricken.

Mr. Cluff: I think it is a fair comparison.

The Court: It doesn't mean anything to the court. We are not going to have testimony here as to how fast the Catalina boats travel. The motion to strike will be granted.

Q. By Mr. Cluff: I will put it this way, Mr. Johnson: Did the "Sakito Maru" seem to slow down—did its speed get less at any time from the time you first saw her until she approached you?

A. No. [228]

Q. So far as you could tell, it looked like the same rate of speed constantly? A. Yes.

Q. As she approached you, I suppose she then became sharp and clear in your vision?

A. Oh, yes.

Q. Could you see the point of the bow where the

(Testimony of Elwood Johnson.)

two sides of the ship came together? I am showing you "Olympic" Exhibit No. 5, and I will ask you if you recognize that as a picture of the "Sakito Maru".

A. Yes, I do.

Q. I direct your attention to the point right up in the extreme bow, on the upper deck, where we see here a little up and down figure. Was that point clearly in your vision as she approached you there?

A. Yes, it would be.

Q. Did you see any man, or man's body, or torso, on that forward deck anywhere?

A. No, I did not see anyone on the boat at any time.

Q. At any time? A. No.

Q. For just a moment turning to the "Olympic" again, did you at any time, before the collision, become conscious of the "Olympic's" bell ringing?

A. Yes.

Q. When, and under what circumstances, will you tell the [229] court?

A. I think before it made that last turn into us, I think it started ringing real loud, and as it came closer, it seemed to be getting harder and harder and faster.

Mr. Cluff: May I have the answer?

(Answer read by the reporter.)

Q. That bell then was ringing continuously?

A. Oh, yes.

Q. Without stopping at all? A. Yes.

(Testimony of Elwood Johnson.)

Q. That was about the time just before she made her last turn?

A. Yes, probably about that time I thought it might sideswipe us.

Q. Can you describe to the court how the impact seemed to you—felt to you?

A. I was quite surprised; I told the boys we had better grab the rail; I did not know what might happen. But I didn't feel a thing. I could hear a big crash, like maybe a truck running over an orange crate, naturally, as it went in, but so far as the movement of the barge, I did not feel anything.

Q. You did not feel any shove? A. No.

Q. After the collision what did you do next?

A. I picked up the fish boxes, and another pole there [230] that Red had left, and looked around, and there was no one there.

Q. McGrath and your boy had gone elsewhere?

A. Yes, they had gone. So I walked around the nose of the Japanese boat, to get back where we got on.

Q. Just a minute. Before you left the left-hand side of the deck to walk around to where you got out, did you see anybody on the upper deck of the Japanese boat then?

A. No. I did not look. I did not see anybody, no.

Q. From your position did the movement of the Japanese boat into the side of the "Olympic"—had that stopped by the time you started to gather up the poles and start around?

(Testimony of Elwood Johnson.)

A. It stopped before I gathered them up.

Q. How far did it seem to you that the bow of the "Sakito Maru" had gone into the "Olympic's" side?

A. I couldn't tell there, but I know when I walked around out on the nose of it, there wasn't more than 15 or 20 feet between the ship and the nose of the ship.

Q. That is, the other side? A. Yes.

Q. Was that right down at the point where the bow of the "Sakito" was in the "Olympic's" deck?

A. I walked about halfway between. I did not pay much attention.

Q. That isn't high up, but right down at the deck, at [231] the point where you observed it?

A. I didn't look up on the boat at all, after it hit.

Q. So, so far as the upper part, you can't tell how far that was? A. No.

Q. But the point where you did see it, with regard to the midship part of the "Olympic", was it halfway through, or was it less than halfway through or more than halfway through?

A. How wide is the "Olympic"?

Q. You can tell where the midship part is, in line with the masts?

Mr. Adams: I object to that as calling for the conclusion of the witness, and assuming something not in evidence.

The Court: He said there was more than 15 or 20 feet left. You can figure it out; use your own mathematics.

(Testimony of Elwood Johnson.)

Q. By Mr. Cluff: After you passed around onto the starboard side, that is, the side where the gangway was, tell us what happened.

A. I saw all the bunch down at that end, but Curtis came with the bait to me.

Q. Curtis, your boy?

A. Yes, and we stood just about right there, where the Japanese boat was. We might have been a little bit past it, and I said to him "You have got lifebelts on." He says, "Yes, we all have", and he says, "You ought to get one." [232] There was a rowboat broke in two, like that, right in front of me, and underneath the back seat was a lifebelt, and I put that on, and he says "Dad, we have seen about everything, haven't we?" That was an old saying we used to have; and I says "Yes." He says "Is that your black coat lying there?" I could see a black coat; it was not mine—it was floating kind of in the water. About that time the "H-10" taxi came up, and the man there said, "Get on; get on", and I turned and jumped on. I still had the fishing box and the rods—poles—and I put them up in the cabin.

Q. You say you jumped on. Did you jump on the roof of the cabin?

A. No, I jumped on the front end, and put them up in the cabin, where the man sits and guides it, the wheel house; I jumped in front of him, and then I turned around, and one of the men was pulling on this girl. I got down on my knees to help

(Testimony of Elwood Johnson.)

him, and her lifebelt was caught. I was sort of standing on my head, so to speak, raising this, and I heard a swish in the water, and I looked up, and I don't know how many feet, but it couldn't have been more than about 15 feet, there was where the whole group was standing, and they kind of threw up their hands, and the water washed them right underneath; then it was quiet.

Q. That was when the barge went down?

A. That was when the barge went down.

The Court: You had no realization that it was going down [233] so quickly? A. No.

The Court: You did not have any sensation of it?

A. No idea. I don't think anybody did.

Q. Mr. Cluff: Did you see the Japanese vessel—did you look at the "Sakito Maru" from the time you got aboard the taxi?

A. No, I didn't see it.

Q. Did you see it separate from the "Olympic"?

A. No.

Q. Before you got on the taxi, while you were walking around to the other side, did the "Olympic" seem to be settling in the water?

A. I couldn't say; I couldn't tell.

Q. Do you remember, when you crossed the deck, if the "Olympic's" masts—poles as you call them—seemed to be tilted, or were they straight up?

A. I wouldn't know.

Q. Was the deck slanted as you went across? Did you have to kind of hold back, or could you walk normally across?

(Testimony of Elwood Johnson.)

A. It seemed to me I just walked normally.

Q. When did you first discover that the boy was not with you?

A. After the barge went down I still talked to him; I thought he was sitting right behind me; and he did not answer. That's when I stood up, and thought maybe he went around in [234] back of the boat. I found that he was not there at all.

Q. You are referring now to the taxi?

A. Yes. I realized——

Mr. Cluff: I think, your Honor, that counsel had better examine on that part, so I won't go any further with that.

Q. So you can't give us any help about the separation of the two vessels? Did you notice the "Sakito" after the separation?

A. Well, a long time after.

Q. After the "Olympic" went down?

A. After it went out and anchored.

Q. Not for a long time? A. No.

Q. At the time you saw her she was at anchor?

A. Yes.

Mr. Cluff: Mr. Adams, I think in justice to Mr. Velpmen that I had better turn the examination over to him before proceeding to cross, because this gentleman is a libellant in the case.

Mr. Velpmen: As I understand it, my going into what he saw about his boy at this time is to be reserved until a later time, when we get to the point of damages, and I see no reason of interro-

(Testimony of Elwood Johnson.)

gation now on that. It has nothing to do with liability.

The Court: That is my understanding.

Mr. Velpmen: As long as I will be privileged to go ahead [235] at a later time.

The Court: I think we might take a 7-minute recess at this time.

Mr. Cluff: Your witness, Mr. Adams.

(Short recess.)

Cross-Examination

Mr. Adams: Mr. Johnson, I have just a few questions.

Q. I believe you testified that after you got aboard the "Olympic" and got your tackle rigged up, you cast your line out and then let the line on the reel out, and you made some comment about the tide running at that time. Did you notice which way the tide ran?

A. I believe that the way I was standing was kind of off this way, if I remember right.

Q. Now let's see. Would it be to your right or to your left as you stood at the rail?

A. A little bit to the right, I believe.

Q. It was running, then, in a direction from your left to your right?

A. Well, you wouldn't say it was straight out, but it wasn't going clear right. It angled a little to the right, if I remember right, when my line went out.

Q. Was the tide away from the "Olympic" or

(Testimony of Elwood Johnson.)

towards the "Olympic", but still to your right? Do you see what I mean by that? [236]

A. My line was going out.

Q. I see. Are you familiar with the directions as you stood there? A. No; I am not.

Q. What experience have you had, if any, at sea?

A. None, I suppose. I have been fishing on live bait boats and barges for about five or six years.

Q. You have never been employed aboard any vessel? A. No.

Q. Have you had much chance to observe large vessels such as the "Sakito Maru" maneuver?

A. What do you call maneuver? I have seen them come in and go out.

Q. Have you any idea as to the time that it takes to bring such a vessel to a stop when it is proceeding ahead? A. No.

Q. Do you have any idea of the distance that a vessel such as the "Sakito Maru" would travel in the direction in which she was proceeding even though her wheel was thrown over to, let us say, hard astarboard? Do you know anything about such matters as that?

A. No; nothing at all.

Q. Before you sighted the "Sakito" did you hear a whistle? A. Yes.

Q. That was when you were over getting bait, as I recall [237] it?

A. No. That was about the time I was fishing with my first bait.

(Testimony of Elwood Johnson.)

Q. With your first boat?

A. Approximately in that time: yes.

Q. Do you recall having heard any whistle after that time? A. No.

Q. Do you recall the direction from which the sound of that whistle apparently came when you heard it?

A. Yes. It seemed like it was coming from the same direction where the boat finally appeared.

Q. I see. Do you have any idea about how much time elapsed after you heard that whistle before you sighted the "Sakia"? A. No.

The Court: Is the court greatly interested in ideas of people? You have both been using that expression "ideas of time". Unless the witness is in a position to give us some accurate estimate, the court is not greatly interested in their ideas. I say that at this time because both counsel have used that expression.

Mr. Adams: Well, I am perfectly willing to let it stand at that. There has been, of course, certain testimony elicited upon direct examination, and upon cross-examination I conceive it to be my purpose— [238]

The Court: I understand, but this witness has not given any estimates of time at any time along the line of any estimate.

Mr. Adams: I take it the testimony—

The Court: As I view his testimony, he was there on the boat, he did certain things and there was a

(Testimony of Elwood Johnson.)

collision, and he saw the boat coming and to him it looked like it was going to miss it, and finally, it was apparent to him it was going to hit it and it did hit it.

Mr. Adams: I will guide myself——

The Court: What I mean, I am not trying to stop you at this time on questions. I have been listening quite a little bit to both counsel asking witnesses their ideas. Now, I am not greatly interested in what their ideas may be. I am interested in what they know. I am not saying that particularly to this question, but to try to stop that type of question from now on.

Mr. Adams: I am certainly willing to be guided by the court's comment as to what he conceives the testimony to be.

The Court: You can understand it does not mean anything to the court. This man was there, fishing; he was not paying any attention even. These people's estimates of time are not a great deal of help, particularly anybody who was sitting there, a passenger on that boat, fishing. If he had a strike there, why, a lot of time could pass and he would not realize it; and it does not mean a great deal [239] to the court.

Q. By Mr. Adams: Mr. Johnson, calling your attention to your testimony about when you first saw the "Sakito", do I understand your testimony to be that the impression that you have is of seeing, first, a black object?

(Testimony of Elwood Johnson.)

A. Yes; I believe I saw it about as soon as anybody, about as soon as anybody could see it when it first came through the fog.

Q. Was the whole outline of the ship visible to you then? A. No.

Q. It, of course, gradually became more visible?

A. Yes.

Q. And when you first saw it could you see the white superstructure, or did that not become visible until the "Sakito" had come closer?

A. When I first saw it you couldn't see the white superstructure.

Q. Did the fog to you seem to be hanging above the surface of the water at a rather high height?

A. No. It just was a high fog. It looked about that time of day it was just a high fog.

Q. The fog was not right down to the surface of the water?

A. Not where we were at.

Q. Have you any idea as to how high above the surface [240] of the water that the strata of the fog commenced? A. No.

Q. I believe you stated that when the "Sakito" seemed to veer towards the "Olympic" that you then became conscious of the "Olympic's" bell being rung continuously and harder, is that correct?

A. The last turn on the—yes; that is when I noticed the bell ringing harder.

Q. That is when you first noticed the bell. Did it also seem to be rung harder at that time?

(Testimony of Elwood Johnson.)

A. Well, I would say much faster.

Q. Was it louder?

A. No; I don't think it was a great deal louder. I couldn't tell. It was much faster you could tell.

Q. You did hear the bell after you came aboard the "Olympic", although you did not pay a great deal of attention to it, I take it?

A. Yes; I heard bells.

Q. Did the sound of the bell when it was rung faster appear to be any louder than the other occasions that you had heard it prior to that?

A. Well, you would think it would be, but it didn't sound to me like it was much louder. I didn't pay much attention to that.

Q. Did you consider that the sound made by the bell at all times was not a loud sound? [241]

Mr. Cluff: Just a moment. I think that calls for a conclusion which could not possibly be helpful, with no basis of comparison.

Mr. Adams: All of the other witnesses have testified as to whether the bell was rung more loudly than before. Certainly——

Mr. Cluff: You didn't ask him that. You asked him if he noticed a loud sound.

The Court: What does it mean to the court? To some people it seems to be loud. What might be loud would depend upon the capacity of the bell as to whether it was a loud bell. Whether the whistle or bell was blown or rung loudly or not would depend upon the capacity of the bell, wouldn't it? Isn't that a relative term?

(Testimony of Elwood Johnson.)

Mr. Adams: Of course, I think that a bell can be——

The Court: Well, go ahead, go ahead. Ask the question.

Q. By Mr. Adams: Would you describe the bells being rung on the occasions that you observed it as loudly, or lightly, or in between, or can you give us any description?

A. Well, it just sounded like all ship bells do when it is foggy. I have been out before when ship bells rang and it just sounded to me the same.

Mr. Adams: Nothing further. [242]

Mr. Cluff: A couple of questions I overlooked, Mr. Johnson.

Redirect Examination

Q. By Mr. Cluff: At the time of the collision or just before it, did you hear any whistle from the "Sakito Maru"? A. No.

Q. Any short whistles, two or three of them?

A. No. To me, those three blasts of whistles I heard was after the collision.

Q. Were after the collision?

A. It seemed it had hit and then they blew the whistles.

Q. You did hear three blasts? Some time right around the collision? A. Yes.

Q. And it seemed to you it was after they hit?

A. It seemed to me like they hit and then blew those whistles.

(Testimony of Elwood Johnson.)

Q. What sort of whistles were they, long or short, and how many?

A. Short, three. I think there was three short whistles. It no doubt was a signal of some kind. That is the way I figured it out.

Q. Had you been in the habit of going out on barges, fishing at Horseshoe Kelp?

A. I have been going out there in the kelp for years. [243]

Q. For years. On what barges?

A. Mostly live bait boats.

Q. Mostly live bait boats?

A. Yes. I have been on barges. I was on the old "Empress" years ago, and I was on another old barge out there. I don't know the name of it now.

Q. Was the "Empress" on the Horseshoe Kelp when you were out there?

A. Yes. They figured it was Horseshoe Kelp.

Q. How many years ago?

A. Oh, it has been a long time. The barge has not been there now for quite a while.

Mr. Adams: Will you let the witness finish the answer, please, Mr. Cluff?

Q. By the Court: What do you mean by "quite a long time"?

A. Well, three or four years I imagine.

Q. By Mr. Cluff: What other barges have you been out there on?

A. I don't know the name of it. There was an

(Testimony of Elwood Johnson.)

old barge out there with a street car for a lunch room. I know I have been on that one sometimes.

Q. A street car on the boat for a lunch room?

A. Yes.

Q. I can't identify that myself.

A. Well, I don't know the name of it.

Q. Had you ever been on the "Point Loma"? [244]

A. No.

Q. On the "Rainbow"? A. No.

Q. You have been out on live bait boats on many occasions? A. Lots of times.

Q. On week days or holidays or both?

A. Both.

Q. That goes back about how many years?

A. Oh, five or six years.

Q. Five or six years? A. Yes.

Q. You have been out every year? A. Yes.

Q. And several times every year?

A. Oh, lots of times.

Q. About how many?

A. Well, we go almost once a week, and every time we could get away or could afford to go.

Q. Would you tell the Court what you have observed there on Horseshoe Kelp in the vicinity of where the barges were anchored with respect to other fishing boats, bait boats or any other kind of boats and barges during the years you have been out there? A. Well, all the—

Mr. Adams: Just a minute, please. May it be understood that my objection— [245]

(Testimony of Elwood Johnson.)

The Court: The same objection and the same ruling heretofore made.

The Witness: Shall I go ahead?

The Court: Yes.

A. Well, all the—when the fish is running out there, naturally, all the live bait boats go out there. I have been out on one—I particularly remember one Sunday, a beautiful day, I was on Billy Rice's boat, sun shining bright, and no fish, but the group of us men were talking and one fellow made a statement he thought there was as high as 400 boats—

The Court: This is a statement from someone on the boat?

A. And I agreed with him that there was just literally several hundred boats. I have seen on a Sunday out there all types.

Q. By Mr. Cluff: How about week days?

A. Also boats on week days, too, when the fish was running.

Q. Have you been out there in foggy weather as well as clear?

A. Once before when I was there on the "Empress" it was a fog when they had to ring the bell, I remember.

Mr. Cluff: That is all, thank you, Mr. Johnson.

Q. By the Court: Where do you live?

A. I live at Rolling Hills at the present time.

Q. Where is that?

A. It is between Redondo and San Pedro. [246]

Mr. Adams: I have one or two questions, if the Court please.

(Testimony of Elwood Johnson.)

Recross Examination

Q. Do you recall a barge by the name of the "Wolfman"?

A. No; I never heard of it. I don't remember it.

Q. Mr. Johnson, on the occasions that you have been out on Horseshoe Kelp, either aboard live bait boats or other types of craft, have you observed merchant vessels passing close to the vicinity, either entering or leaving Los Angeles harbor?

A. Yes; we see boats go by.

Q. Have you seen them go by both sides of Horseshoe Kelp, that is, to the easterly of Horseshoe Kelp as well as to the westerly of Horseshoe Kelp?

A. Well, I am not so very familiar with how big that kelp is. You know, when I was on one barge I might have been in an entirely different location than on another barge. I wouldn't know.

Q. Well, with respect to any of the barges that you have been on there, have you seen vessels pass on both sides?

A. It seems to me, though, the vessels I saw was on the other side.

Q. By the Court: What do you mean by "the other side"?

A. Well, I have to go back to the Catalina boat again. As I see how they come through there, we always see that, and [247] it seems to me the boat would be over where the Catalina boat would be.

Q. By Mr. Adams: That would be the westerly side, wouldn't it?

(Testimony of Elwood Johnson.)

A. Now, you have got me on directions. I don't know on the directions.

Q. As you stood there on the deck of the "Olympic"?

A. You couldn't tell directions that day because you couldn't see far enough. I wouldn't know directions until I saw the shore, and then I wouldn't know where I was at, and I never could see the shore.

Q. If you assume, Mr. Johnson, that as you stood there on the deck of the "Olympic" on the port side you were facing in a general southerly direction, can you tell us whether the boats that you observed pass barges on prior occasions were to the westerly of your position at that time?

A. I am sorry, I am confused on the directions there and I wouldn't know. I just wouldn't be able to answer. I don't know directions here in town, even.

Q. Were you ever out there in a fog on barges?

A. Once before, on the "Empress", I was there when they had to ring the bell.

Q. That was several years ago? A. Yes.

Q. Within the last year or two have you been out on any of those barges during a fog? [248]

A. No. I very seldom fished on a barge.

Mr. Adams: No further questions.

Cross-Examination

Mr. Velpmen: May I ask a few questions?

Q. This fog that you say was out there about

(Testimony of Elwood Johnson.)

the time you saw the "Sakito Maru," Mr. Johnson, can you describe that as a blanket fog, a patch fog, or any other way?

A. I would say just a high fog you would call it. Anyone would call it a high fog, and it was quite thin where the sun was shining through. The sun was quite gray. You could see it was going to be a nice day.

Q. My question is: Was the fog solid or was it in spots?

A. In that vicinity right around the barge it wasn't even in spots, I don't think, not hardly that late. It seems like we came through the fog to get to it and the Japanese boat came through the fog also to come into the district that we were in.

Q. Are you able to compare the speed of the "Sakito Maru" with an automobile.

Mr. Adams: I object to that upon the ground it calls for the conclusion of the witness.

Mr. Velpmen: Well, thinking of an automobile in the——

The Court: You can't compare the two.

Mr. Velpmen: Very well; no further questions, then. [249]

Redirect Examination

Q. By Mr. Cluff: Mr. Johnson, as the "Sakito" became clear on her approach could you see the tops of her masts?

A. I don't remember seeing the masts. It just seems like I could see the top of the ship. To indi-

(Testimony of Elwood Johnson.)

cate the point beyond there, I don't remember.

Q. The top of the house? Was that because you didn't pay any particular attention or because the masts were obscured?

A. Well, I didn't pay any particular attention.

Q. Do you think a view of the "Sakito" was obscured by fog?

Mr. Adams: Objected to upon the ground it calls for the conclusion of the witness.

The Court: Objection sustained.

Mr. Adams: Especially in view of this witness' answer that he didn't notice.

Mr. Cluff: That is all.

The Court: That is all, Mr. Johnson.

Mr. Cluff: Miss Lillian Karsh. [250]

LILLIAN KARSH,

called as a witness on behalf of libelant, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Lillian Karsh.

Direct Examination

By Mr. Cluff:

Q. Miss Karsh, you are the daughter of the Mr. Joseph Karsh who was concessionaire on the barge "Olympic"? A. Yes.

Q. At the time she was sunk. And you were on board at the time of the collision? A. Yes.

(Testimony of Lillian Karsh.)

Q. And had been some time, assisting your father in his business. How old are you?

A. Eighteen.

Q. Did you sleep on the barge the night of September 3rd and 4th? A. Yes; I did.

Q. And what time did you get up?

A. About six o'clock.

Q. Just tell us what you did after getting up?

A. I got dressed and went into the barge kitchen there.

Q. Into the barge kitchen. Now, I wonder if you would show the Court on this photograph here just where the kitchen [251] is. You recognize that as a picture of the "Olympic" do you? A. Yes.

Q. Will you take my pencil and point to the place where the kitchen is.

A. It would be in the back of that. This is the tackle stand, and it would be in back of the tackle stand.

Q. In back of the tackle stand.

Mr. Adams: I don't know whether the witness means forward or in back.

Q. By Mr. Cluff: Are you sure it is in this house or in the after house?

A. No; it is in this house.

Q. Yes. I thought you were a little confused.

A. This would be the kitchen on that side of the boat.

Q. This was on the side that was hit by the "Sakito Maru." Did you see her?

(Testimony of Lillian Karsh.)

A. Yes. This kitchen is right here and that is the cafe here.

Q. This is the cafe forward and then the kitchen is back of it. Do you remember there is a little alleyway running through? A. Yes.

Q. From side to side to side, right back of the kitchen? A. Yes.

Q. All right. You went into the kitchen to get your breakfast? [252] A. Yes.

Q. About seven o'clock?

Mr. Adams: May the record show that she has been referring to the housing which is just forward of the after mast?

Mr. Cluff: Yes; the after housing of the "Olympic".

Q. Did you notice what time it was? What time did you go into the kitchen?

A. It was about ten after six.

Q. How long did you stay in there?

A. Until the collision.

Q. Until the collision. Do you remember when the passengers arrived on the first shore boat?

A. Yes; I do.

Q. How long was that before the collision as you remember it?

A. I couldn't state for sure.

Q. While you were in the kitchen did you hear bells ringing on the "Olympic"?

A. Continually.

(Testimony of Lillian Karsh.)

Q. What sort of bell was it? How did the bell sound?

A. Well, he would ring it continually, and then ring two rings afterwards, and then stop for a few seconds and then start again.

Q. That was going on all the time you were in the kitchen? A. Yes.

Q. What was the first indication that you had that the [253] "Sakito Maru", the vessel that ran into you, was in the vicinity?

A. I looked out through the kitchen window once and I saw it, but it seemed to be passing us and was quite a distance away.

Q. Just a minute. Don't get too far. You looked through the kitchen window. Was there anything that caused you to look up, or did you just happen to look up?

A. I just happened to look out.

Q. What did you see, now? Tell us, first, just what you saw.

A. I just saw the outline of a ship.

Q. How far away was it?

A. I couldn't tell exactly.

Q. Do you know how far away in lengths of the "Olympic" barge?

Mr. Adams: Just a minute. Objected to as already asked and answered. The witness demonstrated she does not know.

The Court: Objection sustained.

Mr. Cluff: All right.

(Testimony of Lillian Karsh.)

Q. Anyhow, you saw it out the window. Now, how did it seem to be headed? How was it headed in the direction with reference to where you were?

A. Northwest.

Q. Do you know what the bow of a ship is?

A. Yes. [254]

Q. The front end. Was that front end pointed right toward the side of the "Olympic" or was it pointed in some other way?

A. No; to the west of the "Olympic".

Q. To the west of the "Olympic". Well, all right, the west of the "Olympic". You are sure of your directions out there? Do you know which way the "Olympic's" bow was pointing? A. West.

Q. West. And it was to the west of the "Olympic". What did you do when you saw that?

A. I just stayed in the kitchen.

Q. All right. What happened next?

A. Well, I was making breakfast and I didn't pay much attention to the "Sakito Maru".

Q. What is the next thing that you remember that happened that impressed itself on your mind?

A. I think someone called my attention to the "Sakito Maru" was getting awfully close.

Q. Did you hear any bells ringing, that is, did you hear any change in the bell on the "Olympic"?

A. Not yet.

Q. Not yet? A. No.

Q. It first was called to your attention that somebody said it was getting close? [255] A. Yes.

(Testimony of Lillian Karsh.)

Q. Do you know who that was?

A. I think it was Pinkie Styles.

Q. Pinkie Styles is the captain of the "Lillian L". Where was he when he said that?

A. In the passageway between the—between the cabins and the kitchen.

Q. That is the passageway right back of the kitchen there? A. Yes.

Q. And then after he said that, just tell us the next thing that happened about the "Sakito Maru" that you saw.

A. It seemed to be heading across our bow, and then as we were watching it, it made a turn and—

Q. A turn in which direction?

A. A turn to the—

Q. That is, away from the "Olympic" or toward the "Olympic"?

A. Toward the "Olympic".

Q. All right. Then what happened? Was there any change in the bell then?

A. The bell started ringing very fast.

Q. All the time? A. Yes.

Q. Then did you stay in the kitchen all this time?

A. Well, no. At that time Captain Styles called for all the passengers who had just got off of his boat to get back on. [256]

Q. Yes.

A. And I went out of the kitchen to get into his boat.

(Testimony of Lillian Karsh.)

Q. Did you go on the "Lillian L"?

A. No; I didn't.

Q. Your sister, was she in the kitchen with you at that time?

A. No; she was out on deck.

Q. She was out on deck. So, after you went out, which side did you go on? Which side of the "Olympic", on the side toward the barge or on the side toward the Japanese boat?

A. On the side toward the barge.

Q. You didn't go aboard the "Lillian L"?

A. I went down there to the gangplank to get on the "Lillian L" and just at that time the collision occurred and I was—the "Lillian L" was knocked away and I was knocked overboard and I got back onto the ship.

Q. You were down on the gangplank then when you felt the collision? A. Yes.

Q. Did that force knock you into the water?

A. Yes; it did.

Q. Then you say you got back on the ship?

A. Yes. I——

Q. Just tell us how you got back on?

A. Well, when it hit, it seemed to push the boat nearly over on its side. [257]

Q. That is, rocked it over like that, you mean, or pushed it sideways through the water?

A. Yes. So the gangway is down, you know, comes down lower; and I was on the bottom of the gangway there, and when it pushed, it pushed me into the water off the gangway.

(Testimony of Lillian Karsh.)

Q. Off the gangway. That gangway was a flat platform about three feet wide, or just about, at the water level where the boats land?

A. Yes.

Q. And that went down and dropped you off into the water?

A. Yes. When I reached out to catch back onto the boat, well, I caught on—I don't know how many steps there were—but it seems about the sixth step. I couldn't get back onto the gangplank, but I got on the steps that went down to it.

Q. You got back onto the "Olympic" barge yourself, then? A. Yes. [258]

Q. You got aboard the "H-10" taxi, I guess, then?

A. I didn't have a life preserver on when I got on the gangplank. [Then——

Q. So what did you do then?

A. So then I got back on and we all got life preservers on.

Q. Did you see Jack Greenwood, the barge master, after you got back on the ship again?

A. Yes, sir; I did.

Q. On the boat. Where was he?

A. He was beside the kitchen, handing out life preservers.

Q. Did you get one with the rest? A. Yes.

Q. Did you see anyone that did not have life preservers?

A. To my knowledge, they all had life preservers.

(Testimony of Lillian Karsh.)

Q. Did you see Joe Culp, the bake boy?

A. Yes; I did.

Q. What was he doing?

A. He was helping to hand out life preservers.

Q. Did you see Mr. Ohiser, the watchman?

A. Yes.

Q. What was he doing?

A. Also helping with the life preservers.

Q. Yes. Tell us how you got aboard the "H-10" taxi?

A. And when the "Lillian L" went away the "Sakito Maru" [259] was still in the "Olympic" there, and there wasn't any water taxis beside us. After that we all got to the side of the barge there and we waited for the "H-10" taxi to come alongside.

Q. Was that when she came alongside? Now, do you know when the "H-10" came alongside, then, or did you see where Mr. Greenwood was?

A. He was still on the back toward the life preservers, I believe. I believe—I am not certain—but I think he was on top of the kitchen near the live bait.

Q. Up where the life preserver boxes were?

A. Yes.

Q. After that did you see Mr. Greenwood anywhere else around the ship before it went down? Did you see him down on the gangway with the passengers after that?

A. I don't understand.

(Testimony of Lillian Karsh.)

Q. I mean did Mr. Greenwood—did you see Mr. Greenwood come down from off the top of the kitchen and come down to around where the passengers were getting aboard the water taxis?

A. While we were waiting for the "H-10" taxi he walked over to the bow of the "Sakito".

Q. Oh, he did. And what happened there?

A. Well, he called up to them for a ladder.

Q. A ladder. And did you see anybody on the "Sakito" then? [260]

A. I didn't notice anybody but I—

Q. You just saw Mr. Greenwood call up for a ladder. Now, just go on and tell me in your own way what happened after that.

A. The "H-10" water taxi came alongside. All the passengers got into line. We thought that if—you know, we would have plenty of time, without jumping over to it, that we could get on one at a time; and we all stood in line waiting for him, and just as it came my turn to get on the barge went under.

Q. And did you go in the water?

A. Yes; I did.

Q. Do you know how many passengers got on ahead of you?

A. I wouldn't know, no.

Q. Do you know if anyone got on after you?

A. I know no one got on after me.

Q. While you first saw Mr. Greenwood calling up for a ladder could you tell how far into the side of the "Olympic" the bow of the "Sakito Maru"

(Testimony of Lillian Karsh.)

was?

A. It seemed about—about 10 feet.

Q. Was it about 10 feet into the side where it happened? A. Yes.

Q. It seemed to be about as far as the center of the “Olympic”?

A. It was further than in the center. [261]

Q. Further than in the center.

A. Because the bait tank was in the center and it was past the bait tank.

Q. It was past the bait tank. At any time before you left the barge did you see the “Sakito Maru’s” bows separate any from the “Olympic”, from the hole? Did it come out of the hole any at all? Do you understand what I mean?

A. I didn’t notice that.

Q. Well, you say you saw the bow of the—

Mr. Adams: The witness has answered she didn’t notice it.

Mr. Cluff: Oh, I thought she said she didn’t understand.

The Court: No; she said she didn’t notice.

Mr. Cluff: Oh, I beg your pardon.

Q. You didn’t notice it. So far as you could see, it was still tied in, the last you saw of it?

A. No; the last I saw of it it was leaving the hole.

Q. Oh. Well, now, the “Sakito” did start to separate, as best you saw. Was that before or after you got in the taxi? A. Before.

(Testimony of Lillian Karsh.)

Q. Before it started to separate?

A. Yes.

Q. Was that just as you got on the taxi or quite awhile before?

A. Well, it all happened—it was not quite awhile. [262] The whole thing happened—it seemed, as it pulled out, the barge went under and I was just getting onto the water taxi.

Q. Do you remember if, after you got back on from the first time you fell in the water, did the barge seem straight up and down, as she usually was, or tilted over towards the right-hand side?

A. It tilted over when I first went into the water, but when I got back on it seemed to right itself.

Q. It seemed to kind of right again?

A. Not completely, but partly.

Q. About the time of the collision, or a little before, or a little after did you hear the “Sakito Maru” blow any whistles?

A. At the collision, at the time of the collision it blew three short blasts.

Q. Three short blasts. Would you say that was before or right at the time it hit?

A. It seemed to me while it was still in the hole.

Q. While it was still in the hole it seemed to blow three blasts? A. Yes.

Mr. Cluff: No further questions. Do you have any questions, Mr. Montgomery?

Mr. Montgomery: Not right now. [263]

(Testimony of Lillian Karsh.)

Cross-Examination

Q. By Mr. Adams: Miss Karsh, as you were standing in the kitchen and as you saw the "Sakito Maru" out of the window, I believe you testified you looked at it and did not pay any further attention at that time, is that correct?

A. I didn't look at it constantly.

Q. How long did you look at it the first occasion that you looked out of the window and saw a vessel going by? A. I didn't time it.

Q. Well, did you remain at the window for any appreciable length of time, or did you just glance out of the window, note the vessel going by and then return to whatever you were doing?

A. Yes; I just noted it was there.

Q. And what were you doing at the time? Were you preparing food in the kitchen at the time?

A. Yes; I was.

Q. And after you glanced out of the window and noted the vessel did you return to your work of preparing food? A. Yes; I did.

Q. In other words, you did not continue to stand at the window and watch the "Sakito Maru" at that time? A. No.

Q. I believe you stated that the next thing that attracted your attention was Pinkie Styles making a statement that the vessel was getting close, is that correct? [264]

A. Yes.

Q. Do you know how long it was after he made

(Testimony of Lillian Karsh.)

that statement that the "Sakito" struck the "Olympic"?

A. No; I couldn't tell you exact minutes.

Q. I believe you testified that while you were waiting for the "H-10" water taxi to come alongside Mr. Greenwood went over near the bow of the "Sakito" and yelled up after a ladder, is that correct? A. Yes.

Q. I assume that he spoke in English, did he not? A. Yes.

Q. He did not speak in Japanese? A. No.

Mr. Adams: No further questions.

Mr. Eastham: May I ask a question?

Cross-Examination

Q. By Mr. Eastham: You testified just now that the bake boy was helping Mr. Greenwood pass out life preservers. Did you see him after that? Did you see Joe Culp after you saw him passing out life preservers to the passengers with Mr. Greenwood?

A. I don't remember whether I did or not.

Q. Do you remember if he was on board the "Olympic" when you got off?

A. Yes; he was. [265]

Q. Do you remember what portion of the barge he was on at that time when you saw him last?

A. I am not sure.

Q. You do remember that he was still on the barge at that time? A. Yes.

(Testimony of Lillian Karsh.)

Mr. Eastham: I thank you, that is all.

Mr. Adams: I have just one further question, if the court please.

Q. Did you board the "H-10" water taxi from the landing or from the deck of the "Olympic"?

A. There was a deck and then there was a higher portion—I don't know what it was called—and had a pulley on it and I was standing on that.

Q. Were the other passengers getting aboard the water taxi from the deck or the landing or what?

A. From this pulley thing, because the deck was already—the water was up to our waist almost.

Q. In other words, at the time you got aboard the water taxi the water was as high as your waist on the deck of the "Olympic", is that correct; that is, if you had remained standing on the deck it would have been up to your waist? A. I imagine so.

The Court: I don't quite understand that.

Mr. Adams: I am not so sure that I do, either. [266]

Q. Was this place where you were standing above the deck of the "Olympic"?

A. Yes.

The Court: You mean at first, or when she was finally getting aboard?

Mr. Adams: When she finally got aboard the water taxi. How high——

The Court: I understood from her testimony that she tried to make the taxi and didn't, and landed in the ocean, and she climbed back up.

Mr. Adams: That is what I was going to get at. I did not quite understand that, either.

(Testimony of Lillian Karsh.)

Mr. Cluff: I think she said the first time when she tried to get aboard the "Lillian L" she was washed into the water by the impact, and then climbed back up in the barge and got into the water taxi. Is that right, Miss Karsh?

The Court: I think we might pursue that a little more in detail—I can see the point—relative to when they were standing in line, expecting to get onto this boat and then the boat sank from underneath. You might pursue that a little bit.

Mr. Adams: Yes.

Q. Miss Karsh, where were these people standing that were standing in line to get aboard the water taxi?

A. They were standing on the deck and around this [267] platform.

Q. Can you describe that platform any more than you have?

A. It was about as high as the rail was.

Q. About as high as the rail? A. Yes.

Q. How big an area did it cover on top?

A. About two feet square, is about all it was.

Q. Only one person could stand on that at a time? A. Yes.

Q. So they were standing in line on the deck of the "Olympic", intending to mount this platform to step onto the water taxi, is that right?

A. Yes.

Q. By the Court: And at that time the "Olympic" was almost submerged, was it? Was it already sinking? A. Yes; it was.

(Testimony of Lillian Karsh.)

Q. And at that time had the "Sakito Maru" pulled away?

A. It was just at that time that the "Sakito Maru" started to pull away.

Q. Was the boat at the time that the "Sakito Maru" pulled away, the "Olympic", the water was almost up to its deck?

A. It was—the deck was wet, but as it started to pull away it filled up, you know, dropped more, I guess.

Q. I know, but ordinarily when they take passengers on [268] and off the "Olympic" it is necessary to land them on a platform at the water's level, and they go up a stairway to the deck. But the "Olympic" had submerged sufficiently at the time that you could go from the deck to the taxi, is that true?

A. Yes; but it was—

Q. In fact, you had to get up on a platform to get onto the taxi, didn't you?

A. We didn't have to, but in order not to get as wet as we thought that we would if we didn't get on the platform.

Mr. Cluff: May I have that last answer, please?

Mr. Adams: Excuse me?

Mr. Cluff: May I have the answer to the court's last question?

(Answer read by the reporter.)

Q. By Mr. Adams: In other words, as all of the people stood in line, you included, waiting for

(Testimony of Lillian Karsh.)

the water taxi, the deck of the "Olympic" was under water? A. Yes.

Q. And at that time the bow of the "Sakito" was still wedged into the "Olympic"?

A. No. The "Sakito" was backing away.

Q. Well, I thought you testified a few moments ago that it was the motion of the "Sakito" or the action of the "Sakito" in backing away that caused the "Olympic" to submerge more just as you were about to get onto the water [269] taxi?

A. Well, the "Sakito", as it came in, went out almost immediately; and when it came in we were over on our side and righted, and then it was just as we righted it seemed to back away.

Q. Just as soon as the "Sakito" ploughed into the "Olympic" and got, as you testified, into about half of the "Olympic", a little bit beyond the bait tank, it immediately pulled right out again?

A. Yes.

Q. Where were you at the time it started to separate from the "Olympic"?

A. I was standing on the deck in line with the other passengers.

Q. But you had in the meantime fallen into the ocean and climbed back up on the landing again?

A. Yes.

Q. During that interval of time? A. Yes.

Q. By the Court: Were you taking your time or were you hurrying?

A. I think I was hurrying.

(Testimony of Lillian Karsh.)

Q. By Mr. Adams: As you were standing in line there, waiting for the water taxi and the other passengers, the "Sakito's" bow was still into the "Olympic", is that correct?

A. It was leaving. [270]

Q. Had it started to separate from the "Olympic" when you got back from the landing and got a life preserver and got in line, waiting for the water taxi?

A. It started to separate just after I got my life preserver on.

Q. And had the water taxi come alongside then?

A. I think so.

Q. People were already getting aboard at that time, were they not?

A. I am not sure.

Q. You were the last one that got aboard the water taxi? A. Yes.

Q. By the Court: How did you get aboard the water taxi?

A. Just as the "Olympic" went down my father was standing behind me and he pushed me toward the water taxi and someone must have caught my arm.

Q. By Mr. Adams: Were you standing on this platform that you spoke of as having a pulley at that time? A. Yes.

Q. And your father was on the deck below. Can you give us any idea of how much time elapsed between the time that you noticed the "Sakito" first

(Testimony of Lillian Karsh.)

separating from the "Olympic" and the time that you got on the water taxi?

A. To me it all seemed like in a minute. I don't know.

Q. Would you say it would be less than a minute?
A. I think so. [271]

Q. A matter of seconds?
A. Yes.

Mr. Adams: No further questioning.

Cross-Examination

Q. By Mr. Montgomery: When you first saw the "Sakito" how clearly could you see it?

A. It was just an outline of a ship.

Q. Could you see the name on it?
A. No.

Q. How soon afterward did you see it clearly?
Did the fog lift or not?

A. The fog was—oh, it just seemed like it lifted all at once, and, you know, it was drifting away.

Q. And then tell me what you saw.

A. I saw the side of the "Sakito" and the—

Q. How do you know it was the "Sakito"?

A. Well, I saw the flag on the side.

Q. What did that flag look like?

A. It was a red flag with a white background.

Q. What called your attention particularly to the "Sakito", if anything?

A. It just happened—

Mr. Adams: If the court please, this has already been asked and answered. I assumed that Mr. Cluff's interrogation was direct examination. [272]

(Testimony of Lillian Karsh.)

The Court: I am not going to let him cover the same ground, but I will give him a reasonable amount of leeway, Mr. Adams.

The Witness: Repeat the question.

(Question read by the reporter.)

A. I think it was because just the ship passing.

Q. By Mr. Montgomery: What did you notice about the bells that were ringing?

A. They were ringing in rotation.

Q. What bells were they?

A. The "Point Loma", the "Olympic" and the "Rainbow".

Q. When you were looking at the "Sakito" did you see anybody on the deck?

A. I didn't notice.

Q. Did you see anybody on the boat?

A. I didn't notice anybody on board.

Mr. Montgomery: That is all.

Mr. Lippert: May I ask a question?

Cross-Examination

Q. By Mr. Lippert: While you were standing in line, with the other passengers to get onto the water taxi was the stairway and platform that was ordinarily used submerged under the water?

A. It was not completely submerged.

Q. About *how* many stairs do you think were still above [273] water?

A. The last two.

(Testimony of Lillian Karsh.)

Q. How far above the side of the water taxi was the platform that you were standing on from which you jumped into the taxi?

A. I don't understand that question.

Q. As I understand it, you were standing on a platform that was slightly above the deck, and from that you went to the water taxi. In order to get to the water taxi did you have to jump down?

A. I don't know. The water was so rough, the water taxi would be above us, and then it would be below us; it kept bouncing around.

Q. Do you know how high the sides were of the water taxi? A. No, I don't.

Mr. Lippert: That is all.

The Court: Just a moment. Let us see if we can understand and reconcile your testimony. You testified that you were getting on the platform because of the water on the deck, and yet, in answer to questions, you said you could still see a couple of steps of the ladder leading down wasn't submerged. The ladder leading down leads from the deck down, doesn't it? A. Yes.

Q. If the deck started to be submerged, how could you see the ladder? [274]

A. Well, as it was over on its side, it was submerged, but as it righted you could see it, I think.

Q. Were the waves starting to come over the deck, the reason you wanted to get up on the platform—the water was starting to beat over the deck?

(Testimony of Lillian Karsh.)

A. The things were starting to roll around and hit my legs.

Q. What?

A. The bait and poles and things like that.

Q. So there was enough water on the deck to be floating things around the deck? A. Yes.

The Court: That is all.

Cross-Examination

Q. By Mr. Adams: Miss Karsh, as I understand it, you were helping your father in the concession aboard the "Olympic", is that correct?

A. Yes.

Q. How long had you been working aboard the "Olympic" that summer?

A. I wasn't exactly working. I just happened to be there when Miss Rubin was off on shore.

Q. You didn't work regularly with your father in the concession?

A. No; I just stayed there with him. [275]

Q. Did you stay there with him all the time?

A. No.

Q. Or just on occasions?

A. Just on occasions.

Q. Did your father open up his concession aboard the "Olympic" when the "Olympic" was first anchored out there in May? A. Yes.

Q. Did you start going out to the "Olympic" at that time? A. Yes, I did.

Q. Were you aboard the "Olympic" on the occasion when the coast guard came aboard? Do you recall that incident?

(Testimony of Lillian Karsh.)

Mr. Cluff: That is assuming a fact not in evidence.

Mr. Adams: It is in evidence, if the court please, in the deposition of Mr. Moynahan, in the file.

Mr. Cluff: It isn't offered yet.

Mr. Adams: We can't prove our case before we question this witness. It will be proved.

Mr. Cluff: I don't care. Go ahead.

Q. By Mr. Adams: Do you recall the incident of the coast guard coming aboard the ship?

A. No, I don't.

Q. You weren't aboard at the time?

A. No.

Q. Do you recall any discussion about that? [276]

The Court: We are not interested in discussions, if she doesn't know whether they came or not.

Mr. Adams: We are endeavoring to show whether Mr. Karsh had that brought to his attention.

The Court: That would be hearsay, what the discussion was there.

Mr. Adams: It it not a question of hearsay; it isn't necessarily an offer to prove what was said.

The Court: If you are going to start to go into these questions I am going to continue this on, and let all the testimony as to the claims come in. You are going into the question of liability.

Mr. Adams: I am going into the question of contributory negligence.

The Court: Then, gentlemen, I am going to let

(Testimony of Lillian Karsh.)

all counsel go into these matters. Go ahead; proceed.

Mr. Adams: I don't intend to do anything different than what the court wishes me to do, but I thought contributory negligence was on the issue of liability that would be determined by the court at this time.

The Court: Proceed.

Q. By Mr. Adams: Do you recall any discussion that took place aboard the barge in the presence of your father, Mr. Karsh, concerning the incident when the coast guard came aboard the "Olympic"?

Mr. Montgomery: I object to that as not proper cross [277] examination.

The Court: It is not proper cross examination.

Mr. Adams: I am examining the witness under 46 A of the United States Supreme Court rules, as an adverse witness.

The Court: This is not proper cross examination, is it?

Mr. Adams: I will assume her as my witness under that rule.

Mr. Cluff: Do those rules apply to an admiralty suit?

Mr. Adams: They are admiralty rules.

Mr. Cluff: Aren't they civil rules?

The Court: Gentlemen, I will settle the argument. I am going to hold that it is not proper cross examination, but I will direct this witness to remain

(Testimony of Lillian Karsh.)

in court, and you can recall her as your witness when you put in your case, on the same rule as applies to the Captain.

Mr. Adams: Do I understand by the court's latter remark, that I am not going to be permitted to cross examine Captain Anderson any further?

The Court: No; I say under the same rule, the same arrangement, as part of your case, to keep things running in a logical manner, that you can recall this young lady as your witness, as an adverse witness, and introduce this evidence; but it is not proper cross examination. You recognize that.

Mr. Adams: I didn't think, while she was on the stand, that it made any difference whether I examined her under [278] that rule or not.

The Court: The objection has been made. So long as counsel does not want to open it up at this time we will confine it to regular channels.

Q. By Mr. Adams: Miss Karsh, during the occasions that you have been out there aboard the "Olympic", had you, on occasions prior to this, observed vessels passing the "Olympic"?

A. Yes.

Q. Passing on both sides? A. Yes.

Q. And going in both directions?

A. Yes.

Q. That was not an infrequent occurrence, was it? A. No.

Mr. Adams: No further questions.

(Testimony of Lillian Karsh.)

Redirect Examination

Q. By Mr. Cluff: Just one more question: You remember the Judge asked you if the stairway went down from the deck, and you said it did. Isn't it a fact that the stairway goes down from the platform; that is, you go up to the platform, and then go down the stairway from the platform, down to the lower landing? A. Yes.

Q. That is, you climb to the rail, or go up to the top [279] rail of the platform, and then you go down the stairway? A. No.

Q. That isn't it?

A. No, it is, I think, one step up, and then down.

Q. That is, you go one step up from the deck to the platform, and then goes down a series of stairs to the lower platform, and then step on to the shore boat? That is the way it happens regularly, isn't it?

A. I think so.

Mr. Cluff: I think that will be all.

(Recess was here taken until 1:45 o'clock p. m. of this day.) [280]

Afternoon Session

2:00 o'clock

LEONARD SMITH,

a witness called on behalf of the libelant, being first duly sworn, testified as follows:

The Clerk: Will you state your name?

A. Leonard Smith.

(Testimony of Leonard Smith.)

Direct Examination

Q. By Mr. Cluff: Mr. Smith, on September 4, 1940, you were the operator in charge of the water taxi "H-10-17"? A. I was.

Q. You were out about 7 o'clock in the morning in the neighborhood of Horseshoe Kelp, alongside the barge "Point Loma"? A. I was.

The Court: Alongside what barge?

Mr. Cluff: The "Point Loma".

Q. I have a little drawing here, Mr. Smith, purporting to show the relative positions of the three barges, as they lay at their anchor on that morning. Does that coincide with your observation of the situation there? A. It does.

Q. That is, with the "Point Loma" almost directly [281] between the "Olympic" and the breakwater, and the "Olympic" to the seaward of her and the "Rainbow" barge, the "Samar", in a line astern with the "Point Loma"?

A. That's right.

Q. Will you indicate with your pencil where your vessel was just before the collision? You have indicated the position about the port bow of the "Point Loma". I will mark that "H-10-17". Were you anchored or adrift? A. Adrift.

Q. Were there any other vessels around you, besides the "Point Loma"?

A. Yes, the tugboat "Clark"—the "Ray R. Clark".

(Testimony of Leonard Smith.)

Q. I wonder if you would indicate where the "Ray R. Clark" was lying?

A. Where the "H-10's" name is here.

Q. A little closer to the port bow of the "Point Loma"?

A. Yes.

Q. When did you take your position with the "H-10" where you have indicated?

A. Do you mean relative to the collision?

Q. With reference to the collision, yes.

A. About 20 minutes before the collision.

Q. About 20 minutes before the collision; and until just before the collision was there any change in the position of your vessel and the "Ray R. Clark", that is, any substantial change? [282]

A. Let me get that straight; I have such a headache. Will you repeat the question?

Q. Will you repeat the question, please, Mr. Dewing?

(Question read by the reporter.)

A. No.

Q. When you took that position, what was the condition of the weather?

A. It was, the way I would describe it was patchy fog, that morning.

The Court: What?

A. Patchy fog; that is, it would be thick for a few moments, and then the wind would carry it off. It just came in clouds.

Q. By the way, Mr. Smith, what has been your sea experience?

(Testimony of Leonard Smith.)

A. I have been operating small boats for about 15 years, and a year or so of that was with tow-boats; commercial fishing; and one year on an oil tanker for the Standard Oil Company.

Q. How long ago was that that you were on the oil tanker? A. 1929.

Q. And you are now manager of the "H-10" Taxi Company? A. That's right.

Q. And handle the entire fleet?

A. Yes. [283]

Q. And has most of that experience, on small boats and water taxis, been around San Pedro?

A. San Pedro, and all the islands, and Mexican waters.

Q. That is, around in this area?

A. In this area, yes.

Q. How far was it between the "Point Loma" and the "Olympic" as it lay there that morning?

A. I estimated between 500 and 600 yards.

Q. About 1,500 or 1,800 feet?

A. Yes, sir.

Q. How far between the "Point Loma" and the "Rainbow"?

A. There was a greater distance. It has been a year, and I don't really recall what it was.

Q. You wouldn't want to give an estimate at this time?

A. It must have been 800 yards anyhow.

Mr. Adams: Was that between the "Point Loma"—

(Testimony of Leonard Smith.)

Mr. Cluff: Between the "Point Loma" and the "Rainbow"?

A. Yes.

Q. What was the visibility that morning, at about the time you came to rest alongside of the "Clark" and the "Point Loma"?

A. Well, we could see the other two barges from where we were.

Q. That is, you could see the "Rainbow" plainly?

A. Yes.

Q. Did the fog seem to be any thicker in any particular [284] direction, or was it a uniform fog?

Mr. Adams: Do you mean at that time, Mr. Cluff?

Mr. Cluff: At that time, yes.

A. I wouldn't be able to answer that.

Q. Was there any change in the weather condition, any substantial change, between the time you took your position there and the time of the collision?

A. Not that I remember.

Q. Now, at the time you took your position there, did you hear the bells on the barge?

A. No, I had my engine running. I was looking for fish. We had been fishing out there all morning, and we had fished astern of the "Point Loma", and we moved around alongside this tug, and were lying there, with the engine idling.

Q. Did you have a line to the tug?

A. No.

Q. I assume that the taxi "H-10" has a cabin, where the operator stands forward in the cabin?

(Testimony of Leonard Smith.)

A. Yes.

Q. He is behind the engine?

A. Practically alongside of the engine.

Q. I suppose that is an enclosed space, with the engineroom?

A. Yes. It is all enclosed; it is a Diesel engine.

Q. What was the first indication you had of the approach or presence of the "Sakito Maru" in the vicinity? [285]

A. My attention was brought to it by the operator of the boat, the "Clark", who was aboard the "Point Loma". He called the deck hand; he was aboard the tug, and told him to start blowing the whistle, to try to attract this ship's attention, and he blew the whistle a few times, and called to me. I forget his exact words, but he asked me to look at that ship over there, how close it was coming to this barge.

Q. Then did you look in the direction of the "Olympic"? A. Yes.

Q. What did you see?

A. I could see this ship coming from the south, coming toward the "Olympic".

Q. From your point of view there alongside the "Point Loma's" bow, how did this ship that you saw bear with reference to the "Olympic"?

A. From right where I was lying it seemed she was coming right directly to her.

Q. Did you see her heading over the "Olympic's" bow?

(Testimony of Leonard Smith.)

A. No, you could see her over the top of the "Olympic".

Q. That is, over the "Olympic's" deck?

A. Yes.

Q. Do you know between which of the three masts on the "Olympic" you could see her?

A. No.

Q. All right. You could see the ship approaching. [286] How much of the ship could you see?

A. I could see the bow enough to distinguish that it was a ship.

Q. That is, you could actually see the structure of the bow? A. Yes.

Q. I want to show you a picture, "Olympic" Exhibit No. 5, and ask if you recognize that as the "Sakito Maru"? A. I do.

Q. Will you indicate on Exhibit No. 5, just by pointing with a pencil, what part of the vessel you could see over the "Olympic's" deck?

A. Well, from a position like this, you could see the superstructure. This would be a poor photograph to explain what you could see.

Q. I realize that. Indicating a point, Mr. Adams, about the height of the hawse pipes?

Mr. Adams: What is this?

Mr. Cluff: [The witness has testified that he could see over the "Olympic's" deck the bow of the "Sakito". A. She was well over here.

Q. Above the hawse pipes?

A. On this side, and you could see up here, on her superstructure, and mast.

(Testimony of Leonard Smith.)

Q. How far away from the "Olympic" was it when you looked at it? [287]

A. From the "Olympic"?

Q. Yes, from the "Olympic", or from yourself, if that is easier to give it, from your position.

A. I would estimate it to be possibly 600 yards or more the other side of the "Olympic".

Q. About 600 yards the other side of the "Olympic". After seeing the vessel in that position, what did you do?

A. I started up. While the engine was running, I just got back in the seat, the one I had in the boat, and put it in gear, and started over there.

Q. You started over toward the "Olympic"?

A. Yes.

Q. For what reason did you go over there?

A. I don't know. It just seemed to me like something was going to happen. I went over there; that was all.

Q. Just tell in your own way what you did, and what you saw from that point, when you started over?

A. As we started over, we were lying westward, that is, when we were lying there, our bow was headed west, and we more or less went into a circle to go into that direction, and we came out of line of where the "Olympic" was not in line with the ship, and it looked for a minute like she wasn't going to hit; that is, she was coming more toward the bow, it seemed to me, and then it suddenly started

(Testimony of Leonard Smith.)

turning into the "Olympic", just as though they started backing down, the propellers pulling it sideways. [288]

Q. Do you now know whether the "Sakito" was a single or a twin screw ship? A. I do not.

Q. I believe it is in evidence now that she was a twin screw ship.

A. It appeared there at the time that it was a single screw ship, and its backing down caused it to go to one side, and turn as though they had lost their rudder power, and turned into the ship.

Q. After she turned into the ship, how long was that before the impact?

A. It was just a minute. It's not very clear. Just a matter of seconds, though.

Q. What was the speed of the "H-10-17"?

A. 13 knots.

Q. How long does it take—I believe you said the motor was running as you were lying there?

A. It was.

Q. So it was just a matter of getting it into gear, and picking up her headway?

A. Yes.

Q. How long did it take to attain full speed through the water, from the time you started up?

A. It would be about 20 seconds.

Q. By that time she would be doing her 13 knots?

A. Yes. [289]

Q. So the majority of the distance that you traversed between your first position and the "Olym-

(Testimony of Leonard Smith.)

pic" would be at your full speed of about 13 knots?

A. Approximately, yes.

Q. Did you observe as you were crossing the interval there—did you see the "Lillian L", one of the "Olympic" shore boats? A. Yes.

Q. Where was she lying?

A. Alongside of the gangway of the "Olympic".

Q. And the bow in which direction, if you recall?

A. His bow was headed west, the same as the "Olympic".

Q. Headed in the same direction as the bow of the "Olympic"? A. Yes.

Q. At the time of the impact, I wonder if you would indicate on the drawing here, just point out about how much of the relative distance between the "Point Loma" and the "Olympic" you had reached?

A. At the time the ship collided?

Q. At the time of the collision, yes.

A. I was right here.

Q. Indicating a point about one point off the bow of the "Olympic", would you say?

Mr. Adams: Let the diagram speak for itself on that score. [290]

Mr. Cluff: All right. We will just mark that.

A. Just a fraction more.

Q. We will mark that with an "S", indicating the testimony of Smith. At that time were you watching the "Olympic"?

(Testimony of Leonard Smith.)

A. I was watching both ships.

Q. How did the "Olympic" react at the time of the crash? A. She heeled over.

Q. To her starboard, of course?

A. To her starboard, and was shoved sideways. I wouldn't know just how far it was; it was quite a distance.

Q. Can you give an estimate in reference to the difference between her first position and the position of the "Point Loma"?

A. It was about 65 or 75 yards, she was pushed toward the "Point Loma".

Q. Did or did not she seem to swing toward the westward as well as move up toward the "Point Loma"?

A. I don't know; from the position I was in I would be unable to tell that, because I was on her bow coming back again.

Q. Well, her port or starboard side, I take it, didn't seem to broaden after the impact?

A. I couldn't say. I didn't see it.

Q. Did her movement make any change in the relative position between your taxi and the "Olympic" from the position you have indicated on the point marked "S"? [291] A. Oh, yes.

Q. Just describe that if you will.

A. Well, can I show it on there? I was in this position and at the time of the impact, and then the ship passed me, coming this way.

(Testimony of Leonard Smith.)

Q. That is, she moved toward the breakwater from you?

A. Yes; she came this way.

Q. Putting you, really, on her port bow instead of on the starboard?

A. And I had to turn and come back this way.

Q. Will you draw a line indicating your course after the impact? Just draw a little line there.

A. After the impact?

Q. Yes.

A. Let's see; like that.

Q. And, I take it, you made that turn for the purpose of getting in on her starboard side?

A. Yes.

The Court: Make that "S-1".

Mr. Cluff: "S-1", mark the dotted line "S-1".

Q. Were you able to hear the sound of the crash?

A. Oh, not very well.

Q. You have no particular——

A. I don't remember of hearing the sound.

Q. Did you hear whistle signals from the "Sakito Maru" at the time of the crash or at any time before it, as you [292] were crossing over?

A. I don't remember. That engine I have is very noisy, the one that was in the boat at that time.

Q. Could you see from your position there while you were making the turn how deeply into the superstructure of the "Olympic" the bow of the "Sakito Maru" had progressed?

A. As she went by us the bow appeared to be

(Testimony of Leonard Smith.)

over halfway through the deck of the "Olympic".

Mr. Cluff: What was that answer, Mr. Bargion?

(Answer read by the reporter.)

Q. As you approached the "Olympic" there could you see the position forward of the after house where the "Olympic's" bell is? A. No.

Q. You couldn't see that?

A. Could I see the condition of the house where the bell was located?

Q. See the position of the bell? A. No.

Q. I mean could you see the bell?

A. No; I never did pay any attention to the bell.

Q. Or could you see anybody standing at the bell? A. No.

Q. Had you prior to the time you took your position as you have indicated there been aboard the "Point Loma"? A. Yes, sir. [293]

Q. What time was that with reference to the collision?

A. Approximately 5 o'clock in the morning.

Q. Approximately 5 o'clock in the morning. Were the bells from the barges ringing at that time?

A. Yes, sir.

Q. Could you hear the "Olympic's" bell?

A. I could.

Q. Could you hear the "Rainbow" bell?

A. Yes.

Q. Now, I wonder, will you tell us after you circled around and approached the "Olympic's" star-

(Testimony of Leonard Smith.)

board gangway, will you tell us just in your own way what you observed about the two vessels?

A. Well, I knew in my own mind that the ship was going to sink very quickly because it evidently had a large hole in it, and the ship being pushed sidewise or sideways, it pushed the "Lillian L" out of position to where he couldn't come alongside. So we went alongside of the gangway with our bow to pick up the passengers.

Q. Excuse me just a moment. As you came around the "Olympic's" bow there to come on the starboard side was the "Lillian L" still alongside, or had it moved away?

A. No, sir; it was gone from there then.

Q. Was she in a position to regain a position by the gangway? A. I believe not. [294]

Q. That is, he had to make too big a circle?

A. Yes.

Q. So, then, you brought the "H-10" alongside?

A. Yes, sir.

Q. At what point?

A. At the gangway, which was located at the after end of the well deck.

Q. At the time you came alongside was the lower floor of the gangway above or below the water?

A. It was below the water at that time.

Q. Below the water. And did you—by the way, you had a deck hand?

A. Yes, sir; had two of them.

Q. Where was he during this approach?

(Testimony of Leonard Smith.)

A. Well, when we arrived at the first position that we have here, marked with "S", the bow of the "Olympic", they were in the cockpit along with me.

Q. The deck hand was in the cockpit with you?

A. Yes. And after we left there and came back to circle around to the gangway, why, I asked them to get on the bow, as the ship was going down fast and it would pull us over on top of it if we put the boat alongside, so we just had to use the bow; and they went up on the bow of the boat to assist the passengers in getting aboard.

Q. What part of the taxi did the passengers come aboard on? Did they come aboard on the bow or on top of the [295] house or in the cockpit?

A. They came aboard on the bow.

Q. Did any of them come aboard on top of the house? A. No.

Q. On the bow and on your cabin, that was in line? A. Yes.

Q. Did you see the vessels separate before you came alongside?

A. Yes; I was right on the bow. I had to wait until the motion of the ship stopped before I could go alongside and, as they parted, or as the "Sakito" backed out, why, we went in alongside.

Q. Then, before you took your position alongside you definitely saw the "Sakito" back out?

A. Yes, sir.

(Testimony of Leonard Smith.)

Q. Prior to that time had the "Olympic" retained her starboard list?

A. She seemed to straighten up at the time.

Q. After they came to rest or before they came to rest?

A. After they came to rest, as I recall.

Q. Did she straighten up entirely?

A. That I wouldn't know.

Q. But before you came alongside with the taxi at all you definitely observed the separation of the "Sakito"?

A. Yes. That is what I had to wait for.

Q. Were you in a position as you made the turn to see [296] the "Sakito's" stern, to see whether her screws were turning?

A. No. I remember their backing down and I remember seeing the wash.

Q. Seeing the wash as she backed down; that is, the wash of quick water towards her bow from the screws? A. From the bows.

Q. At the time you saw that wash had the vessels begun to separate? A. No; that was before.

Q. That was before?

A. Yes. I was on the bow of the——

Q. At the time they separated were you in a position to see whether the wash was continuing?

A. No.

Q. By that time you had come around on the other side of the "Olympic", I take it?

A. Yes. We were judging the speed with which

(Testimony of Leonard Smith.)

the ship was slowing down, to catch her at a time she became almost stopped.

Q. Did you as you came alongside—by the way, do you know Jack Greenwood, who was the keeper or bargemaster on the “Olympic”?

A. No, sir.

Q. Or Joe Culp, the bake boy? A. No, sir.

Q. Or Louis Ohiser, the watchman?

A. I met Ohiser afterwards. [297]

Q. At that time, would you be able to recognize any of them on deck of the “Olympic”?

A. At the time?

Q. Yes. A. No, sir.

Q. After the passengers began to come on board how did the side of the “Olympic” seem with reference to your position there in the cockpit of the taxi?

A. Do you mean in height or—

Q. Suppose you tell the Court. Your line of vision would be how high above the water?

A. Approximately seven or seven and one-half feet.

Q. That would be your own height plus—

A. That would be the level of my eye.

Q. —the freeboard of the floor of the taxi. From your point of view there how much freeboard was there on the “Olympic” as you took your position alongside?

A. When we first came alongside she had, as I remember, about nine feet.

(Testimony of Leonard Smith.)

Q. That is, then, the rail at the time you came alongside would be considerably higher than the taxi's roof?

A. Not much higher than the roof, but a good deal higher than the deck.

Q. A good deal higher than the deck. And that, I take it, rapidly decreased as you lay alongside there.

A. It did. [298]

Q. By the way, you did not put a line on her, I suppose, but were just holding her up with the engine?

A. Just with the engine, yes. That was one of the things I had the deckhands be sure not to do, to put a line on her.

Q. At the time you came alongside and started to take on the passengers, just tell us what happened?

A. Well, we held the boat right up against the bow and they helped the passengers aboard. They all had on life belts and were more or less clumsy with their fishing tackle and their life belts and not being familiar with boats; but they came aboard one at a time, being assisted by the two men that I had, and then later on, one of the men from the barge jumped over and helped them on.

Q. Is that the man you now know as Louie Ohiser?

A. That is right. And then as the ship went clear out of sight, why, we managed to pick up one passenger clear out of the water, and then we were washed over the side of the ship and side.

(Testimony of Leonard Smith.)

Q. That was the young girl that you picked up out of the water? A. Yes.

Q. So the "Olympic" really literally went down with the "H-10" alongside, and you were washed over where the deck would have been?

A. Yes. And then we backed down as hard as the engine would back and hold off of it. [299]

Q. I believe, Mr. Smith, that you received a very well deserved letter of commendation from the Bureau of Navigation for your services in this situation.

A. That was the Department of Commerce, Washington, D. C.

Mr. Adams: I might add that I have previously voiced to Mr. Smith, in behalf of the N. Y. K. Line, the admiration and commendation for his courage.

Mr. Cluff: I think we can all join in that.

The Court: I am glad counsel agrees on something.

Mr. Adams: That is correct. We will stipulate to that, if the Court please.

Mr. Cluff: Yes; we will. Let the record show that that, I think, is unanimous.

Q. After the vessel disappeared, Mr. Smith, just tell us briefly what took place after that.

A. Well, we backed clear of the ship, that is, this position, because I was familiar with those things as to what happens afterwards; the tanks turn loose and boats and different articles, they come up out of the water with a great force; and we

(Testimony of Leonard Smith.)

had to be clear. And my idea was to lay off just clear and wait for the other people to come up, because they were all in life belts and I figured they would all come up and we would get them. There was about five minutes or so, why, the one man's body came up, Mr. Karsh, as I remember, and we called a Coast Guard and asked them to send a pulmotor out; and they asked us to bring him in and they would send a Coast Guard out [300] to relieve us, and for us to come on in. So we did that, took the passengers in.

Q. By the way, was Mr. Karsh—pardon me, had you finished? A. I guess so.

Q. Was Mr. Karsh alive when you recovered his body? A. No, sir.

Q. That is, you got no signs of life?

A. No, sir.

Q. Were other boats around at the time, that is, immediately after the sinking?

A. Yes. I remember a small boat painted gray.

Q. A small boat what?

A. A small boat painted gray.

Q. Oh, painted gray.

A. I don't remember the name of it, or didn't notice the name of it, rather.

Q. Were you joined in this search by the "Lillian L"?' A. Yes.

Q. Any other vessels that came along, other boats or vessels?

A. There was a life boat from the Japanese ship, the "Sakito Maru" later, but I don't remember—I remember seeing it and that is all.

(Testimony of Leonard Smith.)

Q. Did the Coast Guards small boat come out, apparently that came from the "Hermes"?

A. He came out, yes. [301]

Q. That would be a half an hour or an hour later?

A. About a half hour or so.

Q. Did you know a boatswain or boatswain's mate or warrant officer by the name of "Moynahan"?

A. Moynahan?

Q. A Coast Guard man.

A. It seems familiar, but I don't recall.

Q. I will identify him this way, as the officer who was in charge of the small boat launched by the "Hermes". I was wondering if you had any conversation with him about the collision?

A. Well, we went aboard one of the Coast Guard boats at the base after we were there, and they asked a few questions; but we went aboard for the purpose of getting a cup of coffee while we were waiting.

Q. Well, you didn't tell any—or did you tell any Coast Guard officer that you had been fishing about a half a mile southeast of the "Olympic" and hear her bells; you could not see her, but saw the "Sakito Maru" pass just before the collision?

A. No, sir. As I recall, we talked to the cook. I don't remember the name of the boat we were on, but I don't believe it was the "Hermes", but it was one of that type.

Q. At any time when you were out there right around the three barges could you hear a diaphone on the breakwater?

(Testimony of Leonard Smith.)

A. Oh, there was times we could hear it. [302]

Q. Is it audible out there in that district?

A. When the weather is clear enough, if it is not too dense.

Q. When the conditions are favorable. Do you have a definite recollection of hearing it at any time that morning?

A. Yes; I remember hearing it.

Q. At the time of the collision would you say, or at the time just before the collision, you were down in the cockpit with the engine running on the taxi?

A. Yes, sir; as far as the engine was running, ours was.

Q. And you did not hear a diaphone or anything else?

A. No.

Mr. Cluff: That is all, thank you.

The Court: I have a few questions I would like to ask.

Q. If I understand your testimony correctly, when you first observed the bow of the "Sakito Maru" over the "Olympic II", it was some 600 yards south of the "Olympic"? A. Yes, sir.

Q. That would make it about how far from you?

A. About 1200 yards.

Q. About 1200 yards. And you could see her distinctly at that time?

A. The superstructure and top part of the hull I could see.

(Testimony of Leonard Smith.)

Q. At the time that you came up to the "Olympic II", you say that she was sinking rapidly? [303]

A. At the time we went alongside.

Q. Yes. And had the "Sakito Maru" withdrawn at that time? A. It had.

Q. Did you observe whether or not the "Olympic II" was sinking before it withdrew?

A. Yes; it was taking on water.

Q. Did it seem to continue to go down about the same speed all the time?

A. Oh, no. When the vessel, the "Sakito" actually pulled clear it just seemed to open up the hole and down she went.

Q. I know, but did the boat seem to drop more rapidly then? A. Yes.

Q. More rapidly after she withdrew than before?

A. Yes.

Q. You were not in a position to judge anything of the speed that the "Sakito Maru" approached?

A. Well, not anything accurately; no, sir.

The Court: That is all. [304]

Mr. Cluff: May I ask just one or two more questions suggested by the court's line of inquiry?

Q. Mr. Smith, when you were in a position to see the "Sakito's" screws reversing, you were then on the starboard side ahead of her bow and around on the port side of the "Olympic's" bow?

A. I was on whose starboard side?

Q. On the port side, not starboard side. I changed that.

(Testimony of Leonard Smith.)

A. Yes; I was on the port side of the "Olympic."

Q. And then where were you when you saw the separation occur?

A. I was on the starboard side.

Q. You had gotten around to the starboard side?

A. Yes, sir.

Q. And from that point you had proceeded practically three-fourths of the length of the "Olympic" up to the gangway?

A. Yes, sir.

Q. And then when you came alongside the freeboard that you have indicated in the previous testimony looked about like nine feet?

A. It seems to me that is what it was.

The Court: Another question I had to ask, too.

Q. You say that you have been operating taxis in that vicinity for a long time? [305]

A. Yes, sir.

Q. Running taxis to different fishing barges?

A. Well, not particularly fishing barges but—well, there are at times fishing barges and sometimes—

Q. How long have you been familiar with this Horseshoe Kelp bed?

A. Since 1934, when I first started fishing. That is when I first knew what the Horseshoe Kelp was, or why it was called the Horseshoe Kelp.

Q. To what extent have you been going out there since then?

A. Since then I have fished there every night for

(Testimony of Leonard Smith.)

a month after that and had been fishing for a month prior to that and stayed there overnight.

Q. Have you observed other vessels out there fishing? A. Yes, sir.

Q. To what extent?

A. Well, some nights there would be as many as 25 small boats fishing out there.

Q. Used both for commercial and pleasure fishing?

A. At the time I was commercial fishing and on weekends carrying charter parties.

Q. How long have there been any barges located out there?

A. Well, ever since the spring of the year.

Q. I know, but—— [306]

A. You mean the spring of 1940? Oh, you mean in years prior to that?

Q. Yes. Were there any barges there in 1934?

A. Yes, sir; there have been several out there.

Q. There was a barge there in 1934, was there?

A. Yes; I believe the "Samar" was there at that time, 1934 and 1935.

Mr. Cluff: That is the "Rainbow" barge.

A. It was later called the "Rainbow" barge, but at that time it was called the "Samar".

Q. By the Court: Have there been barges there ever since?

A. Not continuously: they are only operating during the fishing season.

Q. That is, from spring till late in September?

(Testimony of Leonard Smith.)

A. Yes.

Q. Have they been there each year?

A. As I recall, yes.

Q. You know that that's the vicinity in which vessels pass entering San Pedro, do you not?

A. Yes, they pass there frequently.

Q. On both sides of the barges?

A. I saw them on both sides.

The Court: That's all.

Q. By Mr. Cluff: Would you say, Mr. Smith, that the majority of the vessels passed to the westward or eastward [307] of the barges?

A. The majority of them passed to the eastward.

Q. That is, toward the Long Beach side?

A. Yes, sir.

Q. Do you recall other barges than those three, that were there in 1940, on the bank? I suggest the "Empress".

A. Yes.

Q. I remember some years ago a man by the name of Joe Hensel had a flat bottom barge, the "Penobscot"—do you remember her?

A. Yes.

Q. Can you name any other barges that have been on the banks during the past dozen years?

A. The "San Juan", for one. She was there in the summer of '40.

The Court: The summer of 1940?

A. Yes.

The Court: In other words, there were four there during 1940 for a while?

A. For a while there were four. I don't remember the names of those fishing barges.

(Testimony of Leonard Smith.)

Mr. Cluff Mr. Anderson mentioned the barge "Wolfman." Do you know her?

A. No, sir.

The Court: Do you remember a barge that had a street car on top of it? [308]

A. Yes, I do. We saw the street car come floating in.

Q. By Mr. Cluff: Was that the "Empress"?

A. I don't believe it was the "Empress". The "Empress" is still afloat.

Q. Is this particular barge the one that broke up?

A. Yes.

Q. A couple of years ago?

A. I don't remember how long ago it was. I remember seeing the street car there on the Long Beach pier.

Q. The street car is new to me. I have no further questions.

Mr. Adams: If the court please, just so that I can preserve the record—

The Court: You may have it understood that the questions the court asked relative to the kelp bed are subject to your objection, and the same ruling; and I might state, with that evidence, the court has received that, and I would be glad to have the matter discussed in the briefs, and the court can then attempt to evaluate it.

Cross-Examination

Q. By Mr. Adams: Mr. Smith, during the occasions that you have been out to the Horseshoe Kelp

(Testimony of Leonard Smith.)

fishing, and have noticed merchant vessels passing the barges anchored there, or other fishing vessels anchored there, have you noticed how close they came to the barges on those occasions? [309]

A. Yes, sir, they at times came fairly close.

Q. Have you observed them ever pass the barges, so as to go between the "Rainbow" and the "Olympic", or the "Point Loma"?

A. Yes, sir.

Q. You have observed vessels, have you not, pass the "Point Loma" and the "Olympic" to the westward?

A. Yes, sir.

Q. Would that be true of vessels going in both directions, that is, entering Los Angeles Harbor and leaving Los Angeles Harbor?

A. As a rule, entering.

Q. As a rule, entering?

A. Yes, sir.

Q. Have you ever been out there in fog, other than on those occasions, when merchant vessels came in close proximity to the barges, or to any of them?

A. Yes, sir, I have been along the "Rainbow" barge, or the "Samar".

Q. Was that during the summer of 1940?

A. Yes.

Q. Was there more than one occasion when that happened?

A. Yes.

Q. Would you say it happened frequently?

A. No, not frequently. Let me make it clear: I fished every night alongside of the barge "Rainbow".

(Testimony of Leonard Smith.)

because the [310] fish seemed to stay there—the particular fish I was after they stayed around this barge, and I fished there every night.

Q. Did you consider, while you were there, and while the other boats were there, that you were near or in the lane customarily followed by vessels entering and leaving Los Angeles Harbor?

A. No, sir, not as a lane, because all of that vicinity out there is more or less the same way.

Q. You would consider all the vicinity out there a lane?

A. Not particularly a lane, but any part of it out there a ship may travel through.

Q. You might expect to encounter a ship either entering or leaving Los Angeles Harbor in any part of that area? A. Any part of it, yes.

The Court: When you say that area, how large an area do you mean?

A. If you are lying in a position three miles from the lighthouse, most any point from the lighthouse, from east to west.

The Court: The area would cover several miles then? A. Yes.

Q. By Mr. Adams: The traffic would fan out, wouldn't it, from the entrance to the Harbor?

A. That's right.

Q. The closer you are to that entranceway the more [311] traffic you might expect to encounter, is that true?

A. That's right, because some ships leaving the

(Testimony of Leonard Smith.)

lighthouse go right directly toward Point Firmin, almost parallel with the breakwater.

Q. Those vessels that are bound for the Canal, and ports along the Coast of Mexico and Central America leave the Harbor entrance on a course of about 160 true, do they not? A. Yes, sir.

Q. Vessels coming up from those ports, entering Los Angeles Harbor, approach on a course of about 340 degrees true, do they not? A. They vary.

Q. Have you observed them following a course which would be approximately 340 degrees true?

A. Coming in?

Q. Yes.

A. Yes, sir, we have a great many of the pilots who will go out and meet the ships coming in from the Canal Zone.

Q. How far do they go out when they meet them that way?

A. It all depends on how the pilot feels. Sometimes they will go out seven or eight miles, and at other times they will meet them within a mile of the lighthouse.

Q. Have you, on occasions, when you have gone out several miles, sighted vessels coming up from the Canal Zone [312] in close proximity to the barges?

A. Yes, sir.

The Court: When do they usually pick up their pilots?

A. As a rule the majority of the pilots, especially the Harbor pilots, catch the ship within a range of

(Testimony of Leonard Smith.)

a mile from the lighthouse, but Mr. Kelton, of the American-Hawaiian Company, he sometimes likes to go away out, and meet the ship coming in.

Q. I am sorry; I did not hear the last answer.

A. Mr. Kelton, of the American-Hawaiian Steamship Company sometimes likes to go away out and meet the ships and ride in.

The Court: In other words, about two miles on this side of where the collision occurred they usually pick up the pilot?

A. That's right, as a rule.

Q. By Mr Adams: Mr. Smith, I realize that it has been a year since this collision happened. You recall that you testified before the A. Board hearing in San Pedro, on September 7?

A. Yes.

Q. I want to call your attention to your testimony there, two or three days after the collision, regarding the distance that you thought that the "Sakito" was from the "Olympic" at the time you first sighted her. I will read you questions, and the answers that you gave, and you tell [313] me whether or not you recall this taking place:

"Q. When the 'Sakito Maru' approached the barge 'Olympic', did it appear to be coming out of the fog all at once or slowly?

"A. When I saw the ship, it seemed to be clear, but it was very close to the 'Olympic' at that time. The ship was sighted, oh, I guess a full minute before I saw it, and they were talking about it up there, and called down to the

(Testimony of Leonard Smith.)

deck hand to blow his whistle. I didn't immediately look again that way, and then the fellow on the boat, after blowing his whistle for a few times, called up and told him it looked like it was going to hit, and that was when I looked at the ship, and it looked to me like it was in the neighborhood of 150 or 200 yards from the 'Olympic' at that time. My boat was headed—the bow of the boat was west southwest; my windows were dirty, I looked out the aft end of the cabin, and saw the ship, and rushed up—have a seat there—and I got on the seat, and put it in gear, and then had to turn before I could see the ship again."

Do you recall that testimony? A. Yes.

Q. Is that substantially correct?

A. Yes, sir.

Q. Do you wish your testimony regarding the distance that the "Sakito" appeared away from the "Olympic", that you gave here, to accord with the testimony that you gave [314] at that time?

A. They are really the same.

The Court: What explanation have you to make of the two differences?

A. The only difference I can see there is, at the time he asked me where I saw the ship, and the time the distance was asked there.

Q. By Mr. Adams: You say "That is when I looked at the other ship, and it looked to me like it

(Testimony of Leonard Smith.)

was in the neighborhood of 150 or 200 yards from the 'Olympic' at that time." Do you think the distances were clearer in your mind two or three days after the collision than perhaps they are now?

A. I imagine they were.

The Court: If the boat was traveling $6\frac{1}{2}$ knots an hour, how far would it travel in a minute?

Mr. Cluff: It travels about 650 feet a minute.

Mr. Adams: If it traveled 6 knots per hour, it would travel 608 feet per minute, and if it was traveling 7 knots per hour, 709 feet.

Mr. Cluff: That would be 658 feet.

Q. By Mr. Adams: Mr. Smith, do you recall talking to Mr. Roethke, of our office, on the date of this collision? A. I do.

Q. Do you recall having drawn a diagram for him, or directing a diagram to be drawn of the boats in the vicinity at the time of the collision? [315]

A. I think I drew one.

Mr. Cluff: Let me see it please.

Q. By Mr. Adams: I show you a diagram, and ask if that is the diagram you recall having prepared at that time? A. Yes, that is mine.

Q. That was drawn on the day of the collision, wasn't it, on September 4?

A. I believe it was drawn that evening, yes.

Q. That is your signature on it? A. Yes.

Q. Does the sketch—

The Court: Which is north in that?

The Witness: Here.

(Testimony of Leonard Smith.)

Q. By Mr. Adams: Will you draw an arrow pointing to that?

A. North would be about in this direction.

Q. You have drawn two sketches on the same diagram, and neither one with reference to the San Pedro light, are they?

A. No; just the approximate location.

Q. The sketch which is on the right hand side is supposed to represent the positions of various vessels at the time you first sighted the "Sakito", is that not correct? Do you see these designations at the top?

A. Yes. This is the same as this here. This was the time that we saw the ship, and it seems as though I designated that to come this way. [316]

Q. Yes. I think you did it here.

A. Yes, that is what this represents.

Q. There is an object in this diagram to the right of what we have been talking about, which is designated as "Sakito Maru"; then another; then an object; then there is a series of dots; then from it is a series of dots. Do those dots, and does that object indicate the direction of the "Sakito Maru" as you observed it at that time?

A. As I observed it.

Q. You have over here another sketch, which is supposed to represent the positions of the vessels at the time of the collision, and there is one sketch showing the "Olympic" and the "Sakito" at the time of the impact, I take it?

A. That's right.

Q. And the other sketch shows—

(Testimony of Leonard Smith.)

A. The time they stopped.

Q. At the time they came to rest?

A. Yes.

Q. Then you have a sketch of the course, of your course, before you bordered the "Olympic", or came alongside the "Olympic"?

A. That's right. This is supposed to represent where the ship passed it.

Mr. Adams: The witness is marking a little pencil mark on the second sketch. I will offer that in evidence.

Mr. Cluff: No objection. [317]

The Court: Admitted.

The Clerk: "Sakito" Exhibit C.

1. Richard C. Fisher

N.Y.

Smith

No. 1138-694
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 13 1942

PAUL F. O'BRIEN
CLERK

at time first sighted

Ramp
Sawyer

"Pat was
sawyer in
vicinity of
"Cape"

No. 1138-694

NO. 1138-694

SEP 17 1942

W. B. Smith

S.P. LITE

PT 6000

no. 1138-694
KIRBY CLARK

Ramp
Sawyer

"SAKITO MARE"

"LILIAN L"

OLYMPIC

OLYMPIC

OLYMPIC

#1138-694
W. B. Smith



(Testimony of Leonard Smith.)

Q. By Mr. Cluff: May I ask a question about that before you resume?

Mr. Smith, in the drawing of this little sketch, made on the night of the collision, is it actually yours, or did Mr. Roethke draw it as you described it?

A. I drew it myself. This is all my writing, except this and this.

Q. The little figures are drawn by you?

A. Yes.

Mr. Adams: The portion indicated that was not in your writing, was the name of the "Olympic" on one, and the "Sakito" on the other? A. Yes.

Q. Now, Mr. Smith, I direct your attention to the question of the amount of freeboard of the "Olympic" at the time you came alongside. I am going to read you certain testimony you gave again at the A. Board hearing, with reference to that feature, so as to refresh your recollection. This on page 374 of the transcript:

"Q. Did you have any difficulty getting alongside the barge?

"A. We had to wait until the speed—she was going sideways; the ship was pushing her sideways, and we had to wait until she stopped going before we could go alongside. [318]

"Q. Was the barge on an even keel when you were alongside, or was she listed?

"A. She was listed slightly.

"Q. Which direction, to the starboard?

"A. To the starboard.

"Q. To the barge's own starboard?

"A. Yes.

(Testimony of Leonard Smith.)

“Q. How much freeboard did the barge have when you got alongside of her?

“A. About seven feet.”

Do you recall that testimony at that time?

A. I do.

Q. Do you think that testimony more accords with your recollection of the event then?

A. It was between seven and nine feet, approximately.

Q. Did I understand you to testify that you at no time heard the whistle from the “Sakito”?

A. I don’t believe I heard the whistle from her. I remember hearing a whistle, but I don’t recall at the present time whether I heard one or not.

Q. You were in this cabin, with your motor idling, during the time you were lying alongside the “Clark”?

A. Yes.

Q. Were you engaging in conversation with someone at that time also?

A. Yes. [319]

Q. With whom were you talking?

A. A person named Frank.

Q. Collins? A. No.

Q. Wydell?

A. Wydell. I have known him for nine years, and I never can remember his last name.

Q. Where was he?

A. He was aboard the tug “Clark.”

Q. With reference to the condition of the fog around 7 o’clock, how would you describe the fog at that time?

(Testimony of Leonard Smith.)

A. I can remember the fog in general for the morning, but not right at 7 o'clock, because I paid no attention to the time.

Q. I am going to refer to your testimony again, and see if it might refresh your memory. This is testimony given by you before the A. Board hearing, page 379:

“Q. Mr. Smith, around 7 o'clock would you describe the fog as being variable?”

“A. Yes, sir.

“Q. Intermittent in density?”

“A. Yes, sir.

“Q. Did that condition prevail up to the time of the collision and for a short time thereafter? A. Yes, sir, it did.

“Q. And had the fog been intermittent and variable [320] prior to 7 o'clock?”

“A. Yes, sir. I remember at one time I could see the barge ‘Samar’, known as the ‘Rainbow’ barge; a few minutes later I couldn't see it at all from the deck of the ‘Point Loma’——”

Do you recall that testimony?

A. I remember most of it, yes.

Mr. Adams: Will counsel stipulate that testimony was given at that time?

Mr. Cluff: I have no doubt, Mr. Adams.

The Court: He says now that he doesn't remember. [321]

Mr. Adams: I am asking counsel for a stipulation.

(Testimony of Leonard Smith.)

The Court: You are using it, in a sense, for impeaching purposes, and he hasn't testified to the contrary; he just says he doesn't remember now.

Mr. Chuff: As far as this witness is concerned, I will stipulate that you can read his whole A Board record in, if you want to.

Mr. Adams: I have no objection, but I don't want to take up the time of the court. I don't think anything is to be added by doing it.

The Court: We are getting into a lot of cumulative matters now, gentlemen, and I am going to start to pinch down on you. You have to get down to the essential points, stop putting in cumulative evidence, things we have been going over and over again with every witness.

Mr. Adams: I have no desire to do it.

Q. Does the reading of that testimony refresh your memory on that point? A. Yes, some.

Q. Do you think what I have read is substantially correct now? A. Yes, sir.

Q. That is all.

Cross-Examination

Q. My Mr. Velpmen: Mr. Smith, were you able to see [322] the forecandle head of the "Sakito Maru" at any time before the impact?

A. Oh yes, I could see it.

Q. Did you see a man or men standing up there at the time? A. No.

Q. Did you see any man up there at any time on the "Sakito Maru"?

(Testimony of Leonard Smith.)

A. No; I didn't pay any particular attention; I was more interested in seeing how much damage was done to the barge.

Mr. Velpmen: That is all.

The Court: I would like to suggest to counsel that we have heard about enough of the recitals of the various parts of this collision. I think from now on we will try to hold the testimony down to the specific matters you have each charged against the two boats; in other words, I am interested, so far as the "Sakito Maru" is concerned, in her speed and visibility, and I am also interested in this question that you have raised as to whether or not the withdrawing was such poor seamanship as to have caused this additional loss of life of the other passengers; and it seems to me that is very essential, so far as the conduct of the "Sakito Maru" is concerned. The testimony is all right, so far as the look-out is concerned, but that is all negative testimony. There may be some other points I have overlooked, but instead [323] of going through these recitals, I don't think anything can be gained by it; and it is just making a cumbersome record.

Mr. Cluff: It is pretty difficult to elicit important points from lay witnesses, unless they are able to tell the whole story.

The Court: If you can't do it, the court will find out a way to do it.

Mr. Cluff: I will be very glad to have the court's assistance.

The Court: You are supposed to try this case. I am just making some suggestions which I expect to be followed. [324]

M. E. WALTER,

a witness called by and on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: You will state your name.

A. M. E. Walter.

Direct Examination

By Mr. Cluff:

Q. Mr. Walter, you were on the "Marell" and were Mr. Gorthe's partner? A. That is right.

Q. Do you remember, after the "Marell" came to anchor, when you heard the first whistles of the vessel that later turned out to be the "Sakito Maru"?

A. Do I remember when I heard them—is that the question?

Q. Yes; after the "Marell" came to anchor, do you remember hearing any whistle from the vessel which turned out later to be the "Sakito Maru"?

A. Yes, I do.

Q. Directing your attention to that time, what was the visibility?

A. Well, I remember at that time it was clearing up, and we could see the "Rainbow" barge very plain, and I would say that the visibility was, oh,

(Testimony of M. E. Walter.)

almost half again the distance of what we were from the "Rainbow" barge. [325]

Q. Half again as far as you were from the "Rainbow" barge? A. Yes.

Q. You were how far from the "Rainbow" barge, do you think?

A. I would judge between a quarter and a half a mile.

Q. Did you hear the bells from all the barges?

A. Yes.

Q. Ringing how?

A. First one barge would ring; then the other barge would ring; and the third one would ring.

Q. At about what intervals?

A. It's hard to say. You hear these things, and being out there so many times you kind of expect them.

Q. Could you hear the foghorn on the break-water?

A. I heard it earlier in the morning. I couldn't say whether it was at that time or not; I don't remember; but I heard it earlier in the morning.

Q. Did you see the "Sakito Maru" prior to the collision? A. Yes.

Q. Describe to the court where she was, and how she appeared when you first saw her.

A. Of course, after I heard the whistles we were looking for something to come through. I had called my partner to come up from in the cabin, and shortly after he came on [326] the deck, a few seconds, I

(Testimony of M. E. Walter.)

should judge, we saw a boat coming through the fog. At that time she was just hazy, way off.

Q. How did she bear from your boat?

A. I was on the direct stern of our boat. I should judge it was a little bit to my left; that would be east of south.

Q. East of south? A. Yes.

Q. Just describe in your own way how she approached, and what you saw.

A. Well, the main thing is, of course, we were watching the boat approaching, and trying to judge in which direction it was going. First, when it first came out of the fog, it looked like it was bearing right at us; then as it came clearer, and we got a clearer view of it, we could see more the starboard side, so we knew it was bearing to the west of us.

Q. Could you form any estimate at any time as to how fast she was going?

A. Well, I don't know. I knew we talked about how fast it was going. It did not appear to us like it was slowing down at all; it seemed to us that it was going faster than boats usually go that come in there.

Mr. Adams: I move the answer be stricken as a conclusion of the witness.

The Court: That part may be stricken. [327]

Q. By Mr. Cluff: Can you give any estimate in miles per hour? A. I would say—

Mr. Adams: I object, on the ground that no proper foundation is laid, and that it calls for a conclusion of the witness.

(Testimony of M. E. Walter.)

The Court: Overruled. Answer the question.

A. It was going much faster—I would say it was going almost twice as fast as what we could go in our boat—what we usually travel in our boat.

Q. By Mr. Cluff: What is the full cruising speed of the “Marell”?

A. We usually run between five and six.

Q. Did you notice any change of course?

A. It appeared to me like it—at first it appeared like it was turning to port.

Q. Turning to her own port?

A. To her port, yes, as it first came into view; then later, as it got beyond our stern, or further toward the “Olympic,” it appeared to turn to starboard.

Q. Toward the “Olympic”?

A. Yes.

Q. How long was that before the collision?

A. Well, I should judge it was, oh, possibly 200 yards, or a little over; about half the distance of where it was from the “Olympic” to the “Point Loma,” I should judge. [328]

Q. By the way, as the “Sakito” approached, could you hear the “Olympic’s” bells?

A. Yes.

Q. Ringing the same peals?

A. Up until just a few minutes before the collision. At that time they started in ringing loud and fast.

Q. How was that continuous ringing with reference to the turn?

A. I should judge it was just about at the time of the turn, if I remember right.

(Testimony of M. E. Walter.)

Q. Did you see the impact; see them crash together? A. I did.

Q. By the way, as they approached did you see any man on the foreward part of the ship, or the forecastle head, or on the foreward deck?

A. Not until just shortly before the collision.

Q. Describe what you saw just before the collision.

A. Just before the collision I saw a man's shape—it wasn't on the forecastle.

Q. Down in the well of the ship?

A. He jumped up, and waved his arm, and ran jabbering toward the bridge. Immediately they started ringing bells, and running up toward the bridge, and then I heard—I remember the blowing of a whistle before they hit; I remember that.

Q. You heard a whistle? [329]

A. Yes, just about the time they hit.

Q. How many whistles?

A. I couldn't say. I don't remember how many.

Q. Following the collision did you see the boats separate? A. Yes.

Q. How long was that after the impact?

A. I pulled anchor, and we turned—I don't know, but it didn't take me very long to pull up the anchor. It was about at the time I finished pulling the anchor that he began to back out.

Q. By the time you got the anchor up he was pulling out? A. Yes.

Q. Did you see the vessels separate?

(Testimony of M. E. Walter.)

A. Yes, they did. I was sitting up on the bow of the boat, and I saw them all the time.

Q. Did you see the screws reverse?

A. No, I wasn't watching anything like that. I was watching the two boats.

Q. How long had you been familiar with Horse-shoe Kelp? A. About since 1935 or '36.

Q. You fished there every year?

A. Every year.

Q. Several times a year?

A. I would say I have been out there at least twice a [330] week during the summer months.

Q. Tell the court, during that period of several years, about how many vessels frequented that bank.

Mr. Adams: Same objection.

The Court: Same ruling.

The Witness: May I have the question?

Mr. Cluff: Will you read the question please, Mr. Dewing?

(Question read.)

A. There were different numbers of vessels at different times of the year; different times of the week, and different classes of boats. You take week-days, generally in a commercial fishing season, they would be mostly commercial boats out there, and, of course, Saturdays and Sundays and holidays, there would be lots of fishing boats there, sport fishing boats, and a lot of private boats.

Q. I take it that the bank was frequented by fishing barges, bait boats, and pleasure boats?

(Testimony of M. E. Walter.)

A. Practically every kind of a boat.

Mr. Adams: I object to that as leading and suggestive.

Mr. Cluff: I was just trying to find out. No further questions.

(Short recess.) [331]

Cross-Examination

By Mr. Adams:

Q. Mr. Walter, how many whistles do you recall you heard from the "Sakito Maru," in all?

A. Well, now, the first whistle, I wouldn't say; it was off in that general direction, and then we heard another whistle; then when I first called my partner was the first whistle I heard; that was shortly after we had seen the other two boats pass on the other side of the "Rainbow." I didn't hear his testimony, whether he brought that out or not. But I called his attention to these other boats passing the "Rainbow" barge, earlier in the morning.

Q. Do you have any recollection of having heard possibly two or three whistles from the "Sakito Maru"?

A. If that first whistle that I heard, off at a distance, was the "Sakito Maru," I would say three then, counting the one just at the time of the collision.

Q. Directing your attention to that first whistle that you heard off in the distance, how long was it after that before you heard another whistle?

(Testimony of M. E. Walter.)

A. I would say it was several minutes; if I remember right, it was quite some little time; in other words, it was not one right after the other; it was at the second time I heard the whistle was when I called my partner up from the cabin.

Q. Do you recall of testifying before the A Board on [332] September 6th and at San Pedro?

A. I remember that.

Q. I am going to read you certain testimony that you gave there.

A. All right.

Q. And see if this refreshes your memory on this point. Page 263 of that transcript:

“Q. Mr. Walter, altogether how many fog signals did you hear from the ‘Sakito Maru’?”

“A. Well, I don’t know. It must have been a good ways off when we heard the first one. Of course, we couldn’t see the vessel. I couldn’t tell you how many we heard. Probably two or three, I expect at least two before we ever saw the vessel, and I know the last one we heard was just as it was coming in sight and then the next one as it hit the vessel.”

Do you recall giving that testimony?

A. According to my memory, that is about right, because we heard one just as it came, or just a few seconds before it came in sight, and then another one I remember just at the time of the collision.

Q. Were all of the signals that you heard from the “Sakito Maru” of the same character?

A. Well, I don’t remember. Just the siren at

(Testimony of M. E. Walter.)

first. That last, after the collision, was not like the first one, you know.

Q. But the others were practically the same? [333]

A. Of course, a lot of those boats sound a good deal alike when they are coming in, especially through the fog when you hear those horns.

Q. Could you give us the length of the whistles; was it a long, a short blast, or medium, or what?

A. That I couldn't remember right now.

Q. Will you tell us what your impression was at the time you first saw the "Sakito" with respect to what was it that you saw?

A. Well, of course, I knew there was a boat, you see, as far as that goes.

Q. What was the color of the object?

A. Well, first when you see anything coming through the fog it looks like—if you are looking for anything coming through, it gets darker in one place and then it gradually grows into a form.

Q. Was the object you saw first a dark object?

A. That would be right, I would say. It looks like, just like a fog gets darker in one place and then it gradually comes out. You have seen fog on land.

Q. You were not able at the time you first sighted the "Sakito Maru" to see the outline of her superstructure, that is, her housing?

A. No; I wasn't when I first sighted it, I would say, more or less than it was just a dark object, you see, coming through the fog. [334]

(Testimony of M. E. Walter.)

Q. It was not until the "Sakito" came closer that you were able to see the housing?

A. Well, I would say it came through pretty fast, probably, from the first sight. It wouldn't take a minute until it was in view. In fact, if I remember right, it looked like it just came out of this fog, was more like little clouds are, you see, and it seemed like it just more or less come out of this streak of fog and just came right into view.

Q. How high above the surface of the water was the deck of your boat?

A. Oh, I should judge that where I was standing was about two foot or a little over above the water.

Q. Could you see pretty clearly along the level of the water from your position? Was visibility fairly clear? A. Well, right——

Q. Along the level, I mean? Do you see what I mean? A. Along that level?

Q. Yes. In other words——

A. In other words, do you mean was the fog high or low?

Q. Yes, yes.

A. No, I wouldn't say. I would say the fog was not neither high or low. It was more streaky fog, clouds, if anything. Lots of times—I know what you mean—lots of times it will hang right close to the water, other times it will be up. No; it was not that kind of a fog. In other [335] words I could see the "Rainbow" barge, and when I could see them at all I could see the whole thing clear, see. Earlier in

(Testimony of M. E. Walter.)

the morning there would be times you could just see—I know there was one time there was a streak of fog out there and you could just see the front part of the barge, and then you couldn't see the barge, just the way the fog moved there, and then you could see the fog move over.

Q. Do you know whether at this time that you saw the "Sakito," the "Rainbow" barge was visible to you?

A. I know all three barges were visible to me.

Q. At that time? A. Yes.

Q. At the time you first sighted the "Sakito Maru" how far would you estimate she was from the "Olympic," if you have any estimate or can give us an estimate?

A. Well, now, it would be very little difference between the distance from the "Olympic" to the "Sakito Maru" than it was the distance to our boat in the position we were lying. If anything, it would be just a little further, but, of course, it would be very little further.

Q. I believe you testified——

A. It came in from the south. The "Sakito Maru," if I remember right, came from almost direct south, maybe a little bit east of south of us, and we were practically directly east of the "Olympic," the stern of the "Olympic" barge. [336]

Q. How far astern of the "Olympic" barge were you?

A. Well, now, I don't know. I remember I testified at this trial about a hundred yards or so; but

(Testimony of M. E. Walter.)

since then we have figured out, Bert and I figured afterwards. I told him that I thought we were just about half the distance between the "Olympic" barge and the "Point Loma." We would be just about half that distance astern of it. When you figure it out that way it is pretty hard to say in yards.

Q. You do recall that when you were at the A Board you did testify a hundred yards?

A. I remember I testified a hundred yards, yes; and I remember the next day, after we talked about that, and I decided we were quite some distance further than that.

Q. I believe you testified here today that you saw the "Sakito" apparently turn to port and then a little later apparently turn to her starboard.

A. That is the way it appeared to me.

Q. And then at the time of that second turning she appeared to be about 200 yards distant, is that correct?

A. I would say——

Q. That is correct?

A. I would say that it was about the same distance, say 200 yards, two to three hundred yards maybe. It would be about the same distance that we were from the "Olympic," I would say, when it made the turn, and I would say about half of the distance from the "Point Loma" to the "Olympic" [337] would be about where it was when it started to turn, see, when it appeared to me it turned to start with, if I remember right.

Q. It would be about half-way the distance between the "Olympic"——

(Testimony of M. E. Walter.)

A. What the distance was between the "Olympic" and the "Point Loma."

Q. —and the "Point Loma" when you noticed the starboard turn? A. Yes, that is it.

Q. About how far away was it when you noticed her prior to that time turn to the left?

A. When it first came into view, as I say—now, it might have been just my faulty vision, I don't know—but it appeared to me like it was swinging. In other words, when she first came into view it looked like it was headed directly towards, and then as it came in it seemed to turn to the left, see. Now, that may be just the vision. [338]

Q. Did it take you some time after you sighted the "Sakito" before you could get a full visualization of her bow?

A. Well, I could see the bow, oh, I should judge a minute or so after it came into view, a good view of it. In fact, we could read the name on the boat, and, of course, we saw the flags on the boat.

Q. Did you become conscious later of having the masts within your vision?

A. Well, I don't remember the masts. I wasn't looking for masts. We were watching the boat and talking about the speed of it and talking about the direction it was going, more than anything.

Mr. Adams: I believe that is all.

Mr. Cluff: I have no further questions.

The Court: That is all.

Mr. Cluff: Call Mr. Ohiser. [339]

LOUIS R. OHISER,

called as a witness on behalf of libelant, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Louis R. Ohiser.

Direct Examination

Q. By Mr. Cluff: Mr. Ohiser, you were the night watchman on the "Olympic"?

A. I was.

Q. How long prior to the collision had you been working on that "Olympic"?

A. I went on board August the 5th, 1940.

Q. Now, the night before the collision you were on duty as watchman at night?

A. I was.

Q. Getting down to within a half hour before the collision—by the way, what time did you have your breakfast?

A. Oh, about 6:30.

Q. About 6:30? A. About.

Q. After you finished your breakfast where did you go?

A. Back out to the bell.

Q. How long did you remain there?

A. Until the accident.

Q. How is that? [340]

A. Until the accident.

Q. Until the accident. Were you ringing the bell during that time?

A. I was.

Q. Tell the Court how.

A. Well, I had a hold of the rope to the clapper and ringing so many rings a—

(Testimony of Louis R. Ohiser.)

Q. It is a bigger bell than this, Mr. Ohiser?

A. Yes, sir.

Q. Show the Court how you were ringing the peals?

Mr. Adams: Are you going to ask me to time this, Mr. Cluff?

Mr. Cluff: What is that? Will you? I forgot about that again. I keep forgetting we haven't got an automatic timer here.

Q. All right, Mr. Ohiser. Wait until I check this a little. All right. All ready, Mr. Adams? Go ahead.

A. (Witness ringing bell.)

Q. I notice you made a little pause. What time did you get, Mr. Adams?

Mr. Adams: Four seconds.

Q. By Mr. Cluff: I noticed you made a little pause there, Mr. Ohiser, between the last two strokes.

Mr. Montgomery: I got it five seconds, myself.

Mr. Adams: Let the record show that I am returning Mr. Cluff's watch. [341]

Mr. Cluff: That is important. I lost the question, Mr. Bargion. Have you got it there?

(Question read by the reporter.)

Q. —was that pause intentional?

A. Yes, sir. That was to give the two little short ones to indicate the "Olympic" barge.

Q. What was the purpose? Did the other barges have distinctive signals too?

A. Yes, sir. The "Rainbow" had one short, towards our left.

(Testimony of Louis R. Ohiser.)

Q. How about the "Point Loma"?

A. It was the "Point Loma" had the one signal. The "Rainbow" had none.

Q. The "Rainbow" just rang all peals?

A. Yes, sir.

Q. About how often and at what intervals did you ring those peals? A. We continued on.

Q. That is, you rang in rotation with the other three barges? A. Yes, sir.

Q. Could you hear the diaphone on the breakwater from that position where the barge was anchored? A. Whenever it was blowing.

Q. Could you hear it that morning?

A. Earlier, yes. [342]

Q. Can you give us some idea about how often in reference to the sound of that diaphone the three barges were ringing their peals?

A. I never paid much attention to it. I heard the noise.

Q. When you were there ringing the bell did you hear any sound signals from other vessels?

A. I heard one.

Q. Where did that appear to come from?

A. It seemed to appear from the south.

Q. And how long was that before the collision?

A. Oh, that was around twenty minutes or so.

Q. Before the collision?

A. Around twenty minutes or so.

Q. During the twenty minutes before the collision how many whistles did you hear?

(Testimony of Louis E. Ohiser.)

A. Well it sounded to me like one long and a couple of shorts.

Mr. Cluff: Mr. Adams, will you stipulate that signal means tug in tow?

Mr. Adams: You mean one long and—

Mr. Cluff: I guess we don't need a stipulation. It is in the rules. One long and two shorts means tug in tow.

Mr. Montgomery: What?

Mr. Cluff: One long and two short whistles means tug in tow under the International Rules.

The Court: I didn't get it. [3-43]

Mr. Cluff: I say, I asked Mr. Adams to agree that one long and two short whistles means a tug in tow. It is a fog whistle of a vessel with a tug in tow, rather than a free vessel.

Q. Did you hear any other signals? A. No.

Mr. Adams: What was the answer?

Mr. Cluff: Don't shake your head, Mr. Ohiser. Just speak so that the reporter and everybody here can hear you. A. No; I heard no more.

Q. Did you later see the "Sakima Maru"?

A. I did.

Q. From what direction did she appear to you?

A. From the south.

Q. From the south? A. Yes, sir.

Q. How did she bear with reference to the "Olympic", the "Olympic's" port side?

A. Well, she was going the same direction as the barge was headed.

(Testimony of Louis R. Ohiser.)

Q. In absolutely the same direction?

A. Practically.

Q. In other words, absolutely parallel?

A. That is what it seemed to me.

Q. Do you remember, Mr. Ohiser, that when you gave your deposition you made a drawing here showing the three barges, [344] the "Olympic", the "Point Loma" and the "Rainbow"?

A. Yes, sir.

Q. Then you drew various other figures showing the position of the "Sakito Maru" at various times?

A. Yes, sir.

Q. Now, the position you have marked here "Sakito 1"—

A. Yes, sir.

Q. —is the position about when you first saw her?

A. Yes.

Mr. Cluff: I will just offer that deposition, already marked, I think, as—no, it is marked with a "W", I think, just the notary's name, but let us take that as the "Olympic's" next exhibit. That will be what?

The Clerk: That will be 7.

BOOKWTR X

EST BOOKWTR

Point 2044

OLYMPIC II

SAWTO 2

Sawto 1a.

Sawto 1

RAINSONG

No. 1138
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JUL 13 1942
PAUL P. O'BRIEN,
CLERK

No. 1138
SEP 7
SEP 17 1942

(Testimony of Louis R. Ohiser.)

Q. By Mr. Cluff: After you saw the ship in that position did you have any apprehension that there was going to be a collision?

A. Not at that time; no, sir.

Q. What did you do with respect to the bells?

A. I continued the regular bell.

Q. Continued the regular peal.

Q. By the Court: What was the interval between the ringing of the bells on your boat?

A. Well, it was about rung five seconds every minute.

Q. What?

A. About five seconds every minute. [345]

Q. Did you have any way of timing it, or just your estimate? A. Just an estimate.

Q. By Mr. Cluff: You continued to watch this boat approaching? A. I did.

Q. Could you see passengers along the rail, the port side? A. Of which?

Q. Of the "Olympic"?

A. I never paid no attention to any of the passengers at all.

Q. You never paid any attention; you were watching the ship?

A. I was watching the ship.

Q. How far away was the "Sakito" at the time you first saw her in that position—

A. It seemed to me about five or six lengths.

Q. Five or six lengths of the barge or about five or six lengths of the "Sakito"?

A. Of the "Sakito's" lengths.

(Testimony of Louis R. Ohiser.)

Q. Now, she continued to approach on that course for some time?

A. For a little short time; yes, sir.

Q. Then what happened?

A. She turned hard right, it seemed to me to hard right. [346]

Q. She turned hard right. How far away was she when she turned to the right?

A. Around about five lengths.

Q. After that what did you do?

A. I rang the bell continually, all the time.

Q. And for how long? A. Until she hit.

Q. After she turned to the right and headed—how was she headed then after she completed this turn? A. Headed straight for us.

Q. Straight for you? A. Yes, sir.

Q. Did she change course again?

A. I didn't see no change.

Q. You continued ringing this bell?

A. I did.

Q. Continuously until the collision?

A. I did.

Q. How far was it from you when the ship struck?

A. How far I was from the ship?

Q. How far were you from the point where the "Sakito" struck?

A. Oh, I think it must have been around between ten and fifteen feet.

Q. Did you leave the bell before the impact?

(Testimony of Louis R. Ohiser.)

A. Just as it hit. [347]

Q. Just as it hit? A. I did.

Q. You left the bell and went where?

A. I jumped around the corner of the little house.

Q. The port side? A. Yes, sir.

Q. While you were there in a position to—or just a minute. After the ship turned right, as it was coming toward you, you were able to see the bow of the “Sakito”?

A. I was.

Q. The forecastle head? Did you see any man standing up there, showing waist high above the bulwarks?

A. I saw none.

Q. Did you look for anybody up there?

A. I did.

Q. And you didn't see anybody?

A. I could see nobody.

Q. After you were struck how far into the barge did she go?

A. Well, she went over half way.

Q. She went over half way? A. Yes, sir.

Q. That is, beyond the keel? A. Yes, sir.

Q. By the way, before the impact did you see Jack Greenwood, the barge keeper? [348]

A. He come around there when I was ringing the bell continuous and he saw *me* and he told me to keep on and I kept on.

Q. And then he went somewhere else?

A. He went some place; yes.

Q. At the time the “Sakito” struck and went into the barge did you see anybody on the “Sakito”?

(Testimony of Louis R. Ohiser.)

A. I saw no one—well, yes; one man came up from what you call the well deck.

Q. Came up from the well deck? A. Yes.

Q. Onto the forecastle head?

A. Looked over the corner.

Q. Do you remember whether he had a uniform cap on? A. No.

Q. You say he didn't or you don't remember?

A. I don't remember seeing any uniform.

Q. I can't tell what you mean when you shake your head. A. I saw no uniform on him.

Q. Did you have any conversation with him?

A. Yes, sir.

Q. What went on?

A. I hollered to him to lower a rope and also lower a life boat.

Q. What did he say, if anything?

A. No answer at all.

Q. None. What did he do? [349]

A. He didn't do nothing, just looked down at me.

Q. The "Sakito", at the time you had the conversation with this fellow, was she still fast in the hole? A. Yes, sir.

Q. Could you see any separation at all?

A. Not at that time.

Q. After that what did you do, after shouting up to the fellow?

A. I went around to the other side and I saw Mr. Greenwood throwing down life preservers.

Q. He was then where, on top of the house?

(Testimony of Louis R. Ohiser.)

A. On top of the house.

Q. That is where you kept your life preservers, up on top of the cafe? A. Yes, sir.

Q. And he was throwing down life preservers?

A. Yes, sir.

Q. Anybody with him? A. No, sir.

Q. Did you see Culp, the bake boy?

A. No, sir; not at that time.

Q. What did you do after seeing him there?

A. I got up on top.

Q. What is that?

A. I got up on top and helped him.

Q. Did you also throw down life preservers?

[350]

A. I did.

Q. Did you see that everybody that remained on the barge had life preservers? A. I did.

Q. Did you see the "Lillian L" at that time?

A. I did.

Q. Where was she?

A. Alongside, loading people as fast as she could.

Q. Was the "Lillian L" alongside after the collision?

A. Well, she was a trifle ways away from us.

Q. Were the people still getting aboard?

A. I couldn't say.

Q. When you say "loading people as fast as she could", were you referring then to the "Lillian L" or to the "H-10"? A. To the "Lillian L".

Q. Did you see anybody get aboard the "Lillian L" at any time?

(Testimony of Louis R. Ohiser.)

A. I saw one man jump aboard.

Q. Jump aboard?

A. Yes. And then I turned my head after that and continued on with the life preservers.

Q. After you got up on top and served out these life preservers did you pay any further attention to the "Sakito"?

A. No.

Q. Did you see her pull out?

A. Not until I was coming down the steps. [351]

Q. When you were coming down the steps, that is, from up on top of the house?

A. She had started pulling away then.

Q. She had started pulling away then?

A. Yes.

Q. Then after you came down the steps what did you do?

A. I was wading in water then and went around where the bunch were waiting to get onto the boats.

Q. Was there water on the deck at that time?

A. Yes, sir; it was rushing in.

Q. Rushing in from where?

A. From where the "Sakito Maru" was there into the boat. She was starting to pull off and it came all over.

Q. You mean the water was rushing on the deck or onto the hold?

A. Onto the deck.

Q. Onto the deck. Where was it coming from, from the sea or coming out of the hold?

A. Out of the hold.

Q. Then what did you do after that?

(Testimony of Louis R. Ohiser.)

A. I went over to the rest of the people there and stood with them and tried to get them aboard the water taxi.

Q. The "H-10" had come alongside in the meantime? A. Yes, sir.

Q. Did you get onto the "H-10"?

A. I did a little later; yes, sir. [352]

Q. As you went onto the "H-10" you were helping people aboard? A. I was.

Q. Did you see Jack Greenwood and Culp at that time? A. I did.

Q. What were they doing?

A. Standing back, pushing people toward the stern, keeping them from going back the other way.

Q. Did they continue to do that until the ship went down? A. Yes, sir.

Q. So far as you know, they went down with her?

A. They did.

Q. Did you see them on board as she went down?

A. Yes, sir.

Q. Did you actually see the ship go down or were you engaged in something else? A. I did.

Q. What is that? A. I did.

Q. Were you the one who helped Miss Karsh who was on the stand this morning? A. I was.

Q. Helped her out of the water? A. Yes, sir.

Q. And then following, as you helped her up—when with reference to the time you helped her aboard did the "Olympic" [353] go down?

The Court: Isn't that cumulative?

(Testimony of Louis R. Ohiser.)

Mr. Cluff: Possibly so. All right, I think that is all, Mr. Ohiser. Oh, just one question Judge Montgomery suggests.

Q. You have seaman's papers? A. I have.

Q. Been to sea a number of voyages?

A. Yes, sir.

Q. Both coastwise and voyages at sea?

A. Yes, sir.

Q. Ordinary seaman's papers, also wiper and messman? A. That is right.

Q. As the "Sakito Maru" approached, how fast was she coming?

Mr. Adams: Objected to on the grounds it calls for a conclusion of the witness, no proper foundation laid.

The Court: Objection overruled.

A. It seemed to be coming pretty fast.

Q. By Mr. Cluff: Well, have you got any idea in miles per hour, knots per hour?

A. No; I haven't.

Mr. Cluff: All right; that is all.

Mr. Adams: Well, I move the previous answer be stricken as unintelligible, what this witness considers "pretty fast."

The Court: It speaks for itself. "Pretty fast" doesn't mean anything. [354]

Mr. Adams: Just so long as that is understood it doesn't mean anything I have no objection. If the Court please, if I might have five minutes I think I could expedite the cross examination of this witness and save time by so doing.

(Testimony of Louis R. Ohiser.)

The Court: You mean a five-minute recess at this time?

Mr. Adams: Yes.

The Court: If it will expedite matters more than five minutes I am willing to give it to you. Is that a promise or a threat?

Mr. Adams: Well, I will guarantee it will expedite it more than five minutes.

The Court: All right. Recess for five minutes, then.

(Short recess.)

Cross-Examination

Q. By Mr. Adams: Mr. Ohiser, if I understand your testimony correctly, you were employed aboard the barge "Olympic" for the first time on August 5th? A. Yes, sir.

Q. And you were employed as a watchman, is that correct? A. That is correct.

Q. Had you ever been aboard that barge prior to that date? A. No, sir.

Q. Had you ever been out on Horseshoe Kelp prior to that date? [355] A. No, sir.

Q. During the time that you were aboard the barge after August 5th up until September 4th had you frequently observed vessels, merchant vessels passing the barge "Olympic"?

A. Well, whenever I happened to be looking that way, seeing them.

Q. You saw them on occasions, did you?

A. I did.

(Testimony of Louis R. Ohiser.)

Q. Passing on both sides of the barge?

A. Well, mostly on the right, towards the stern of the boats, most of them.

Q. Toward the stern of the "Olympic"?

A. Yes, sir. [356]

Q. You saw some merchant vessels go between the "Olympic" and the "Rainbow", did you not?

A. I think I saw one.

Q. Only one?

A. Practically. There might have been more but I didn't see them.

Q. You saw vessels passing the barges in close proximity, going in both directions, did you not?

A. I may have.

Q. Your duties were performed during what hours?

A. Oh, about 4 o'clock in the evening until 6 in the morning.

Q. And then did you continue remaining aboard the barge during the daytime?

A. Well, yes, except the days I went—about twice a week I went in town.

Q. You slept mostly during the daytime, I take it?

A. Yes, sir.

Q. You do not have a lifeboat certificate, do you?

A. No, sir.

Q. And did not have at that time, at the time of the collision?

A. I had none at any time.

Q. You are short-sighted, are you not?

(Testimony of Louis R. Ohiser.)

A. Well, I got astigmatism. I can't see anything up close to me without glasses. [357]

Q. You customarily wear glasses, don't you?

A. Yes, sir.

Q. And those glasses are to correct a condition of short-sightedness, are they not? A. Yes, sir.

Mr. Cluff: Just a moment. That calls for a conclusion of the witness. I don't believe I could testify what I wear glasses for. I know I have got to wear them.

Mr. Adams: That suggests a point which I have in mind. I would like at this time to request the court for an order directing an examination of Mr. Ohiser's sight.

Mr. Cluff: You don't need an order. I was asking him about that. You can have the examination by any oculist you like.

Mr. Adams: All right.

Mr. Cluff: But what is the materiality of it, though?

Mr. Adams: I should think the eyesight of a lookout would be quite material.

Mr. Cluff: The eyesight of the lookout did not cause the collision between the "Sakito Maru" and the "Olympic".

The Court: If Mr. Ohiser wants to submit to an examination and you want to pay the bill, it is satisfactory. I am still rather inclined to feel that, and I thought as I read the pre-trial brief, just what would be the function of a lookout on an anchored

(Testimony of Louis R. Ohiser.)

boat? What could he do if he saw something coming? [358]

Mr. Adams: Well, he could certainly have taken some precautions, even outside of the rules and regulations, if the court please, if you saw a vessel approaching.

The Court: How could he have avoided it?

Mr. Adams: Well, he could have sounded some warning. He could have sounded his bell long before. He didn't even hear the whistles of the "Sakito". He could have sounded his bell continuously and sounded it hard, as he did when he saw her turn hard right if he had heard the whistles or if he had seen her sooner than he did, or if he had seen her accurately.

The Court: It may have some influence upon some other court. You can have the examination if you want it and get it into the record.

Q. By Mr. Adams: Let me ask you, Mr. Ohiser, on that point: You were not wearing your glasses as you were standing lookout that morning, were you? A. No, sir.

Q. By the Court: Do you have any trouble with your vision at a distance? A. No, sir.

Mr. Adams. What was the question and answer, please?

(Record read by the reporter as requested.)

Q. Do you mean, Mr. Ohiser, that you can see at a distance as well without your glasses as you can with your glasses? [359] A. Yes, sir.

(Testimony of Louis R. Ohiser.)

Q. Have you had your eyes tested and that result has been expressed to you by an oculist?

A. Yes, sir.

Q. What is the purpose of your glasses? What do the oculists tell you that you have to wear them for?

A. Astigmatism.

Q. I thought you testified that it was for short-sightedness?

A. Well, it is short-sightedness, too. I think they call it both. I don't know.

Q. By Mr. Cluff: Mr. Ohiser, you are willing to go to an oculist at any time, at Mr. Adams' convenience, this afternoon if he wants?

A. Absolutely.

Mr. Adams: We will take that up later.

Q. Mr. Ohiser, what was the condition of the weather between 6:30 and 7 o'clock the morning of September 4, 1940?

A. Foggy, off and on.

Q. And what was the distance of visibility during that period of time?

A. Well, I could see, off and on, the side of the "Rainbow".

Q. When did you sound your fog bell?

A. What do you mean?

Q. What regulated the sounding of your fog bell, [360] visibility?

A. The fog.

Q. Fog?

A. Yes, sir.

Q. Did you act on your own initiative in determining whether the fog was dense enough to cause you to sound the fog bell?

(Testimony of Louis R. Ohiser.)

A. When I couldn't see the other boats I knew it was time to ring the bell continuously.

Q. Did you ever ring the bell independently of any of the other barges, acting on your own initiative that morning? A. Not that morning, no.

Q. As a matter of fact, you only rang your bell when you heard the other barges ringing theirs, isn't that correct?

A. Because I knew the fog was coming from the shore.

Q. Will you answer the question? You only rang your bell when you heard the other bells precede you and ring theirs, isn't that correct?

A. Yes, sir.

Q. You did not on your own initiative ring your fog bell when the other barges were not ringing their bells? A. No, sir.

Q. As long as the barge "Rainbow" was visible from the "Olympic" were *there* bells being sounded by the other [361] barges? A. Yes, sir.

Q. Even though the "Rainbow" was visible to any person aboard the "Olympic", and even though the "Olympic" might therefore have been visible to anyone aboard the "Rainbow", the barges were still sounding their bells, is that correct?

A. That is right. When it got a little bit thicker I sounded mine.

Q. What do you mean by that, "When it got a little bit thicker?"

A. When it got a little bit hazier, where I could

(Testimony of Louis R. Ohiser.)

just barely make the outline, when it was coming thicker towards me.

Q. Were there times when the "Rainbow" sounded its bell and you did not sound your bell?

A. Oh, at times; yes.

Q. What was the condition of the fog at those times? A. Well, kind of light.

Q. In what direction?

A. Well, towards the shoreline, the breakwater.

Mr. Cluff: May I interrupt a moment, Mr. Adams? Will you fix the time when you are directing your examination to? It seems to me very indefinite.

Mr. Adams: The witness had indicated that there were times when the "Rainbow" did not sound its bell and he sounded his, and I referred to the times when the "Rainbow" [362] sounded its bell when he did not sound his.

The Court: What difference does it make what they did on other times? Aren't we only interested in the sounding of the bells at the time of the collision?

Mr. Adams: Yes, if the court please, but the ringing of bells in just one minute before the collision and——

The Court: Are you talking about that morning or are you talking about some other morning?

Mr. Adams: I am talking about this morning; yes.

The Court: All right. As long as you are talking about that morning it is all right.

(Testimony of Louis R. Ohiser.)

Q. By Mr. Adams: As a matter of fact, there was only one other occasion when you ever had any fog since you have been employed on the "Olympic" out there, on August 5th, isn't that true?

A. Yes, sir.

Q. This is really the first occasion you have ever had any really foggy weather since you were employed on August 5th, isn't that correct?

A. The second.

Q. The first occasion was a very light fog that cleared up very quickly, isn't that true?

A. Yes, sir.

Q. Directing your attention to the morning of September 4th, particularly to the interval of time between 6:30 and 7:10 a. m., was there ever any time during that period that [363] the bell was being sounded on the barge "Rainbow" and you were not sounding your bell aboard the barge "Olympic"?

A. No. I was ringing mine at the regular times.

Q. Was there any occasion during that period of time when you were sounding your bell aboard the barge "Olympic" and the "Rainbow" was not sounding its bell?

A. Well, when I was ringing the rest of them didn't ring because it would confuse the other boats coming around.

Mr. Adams: Would the reporter read that answer, please?

(Answer read by the reporter.)

Q. When you rang your bell the other barges did not ring their bells? A. No.

(Testimony of Louis R. Ohiser.)

Q. You mean they just discontinued for a certain interval of time the ringing of their bells?

A. Until I stopped and then another one started.

The Court: What is that? What is that answer?

(Answer read by the reporter.)

Q. By the Court: In other words, they were ringing in rotation? A. Yes, sir.

Q. By Mr. Adams: Now, Mr. Ohiser, during that interval of time between 6:30 and 7:10 o'clock a. m., September 4th, you testified that the fog was intermittent; it varied, did it not, during that interval?

A. Yes, sir. [364]

Q. Sometimes it would be dense and sometimes it would lighten up, is that correct?

A. That is right.

Q. And during the periods or the occasions that it would lighten up did the barges discontinue ringing their bells at regular intervals?

A. Well, a couple of times.

Q. A couple of times between 6:30 and 7:10 o'clock they discontinued ringing their bells, is that it? A. 10 o'clock did you say?

Q. Between 6:30 a. m. and 7:10 a. m. there were a couple of times during that period of time that they discontinued ringing their bells in rotation, is that correct?

A. Just about a few minutes we didn't ring.

Q. Can you indicate when those two occasions occurred between those two periods of time, or those

(Testimony of Louis R. Ohiser.)

two points of time; was it near 7 o'clock when you discontinued ringing the bells?

A. I couldn't say. I did not look at my watch.

Q. Do you have any recollection about how long it was on each of these two occasions that the barges discontinued ringing the bell?

A. I did not look at my watch to keep track of the time at all.

Q. Do you consider that you are able to gauge time rather accurately without looking at a watch? [365]

A. Oh, sometimes.

Q. Were you able at that time to gauge it accurately?

A. Oh, a little bit.

Q. Can you give us your best estimate, based on your ability to gauge time, as to how long it was during each of those two occasions that the bells were discontinued?

A. Oh, I couldn't do that now.

Q. Just how are you able to estimate that the bells were sounded, when they were sounded, at regular minute intervals if you are not able to give that estimate?

Mr. Montgomery: I object to the question as argumentative.

Q. By Mr. Adams: Upon what do you base your estimate that the bells were being sounded in rotation at regular minute intervals?

A. Well, just by guesswork.

Q. And that is by the same guesswork that you just spoke of?

A. Just about.

(Testimony of Louis R. Ohiser.)

Q. Do you recall how long before the collision it was that this second occasion occurred that you discontinued ringing the bells aboard the three barges?

A. I couldn't say because I didn't look at my watch.

Q. Might it have been somewhere around 7 o'clock? A. It might have been.

Q. Might it have been somewhere around 7:05 a. m.? [366]

A. No; because I was ringing it continuously.

Q. You were ringing continuously from 7:05 a. m.? A. Yes.

Q. Well, I thought you were not ringing continuously until you saw the "Sakito Maru" turn sharply to the right. A. That is right.

Q. Do you say now that the "Sakito Maru" turned sharply to the right at directly 7:05 a. m.?

A. I couldn't say what the time was because I did not look at my watch at the time she turned.

Q. Then, might one of these occasions when you discontinued ringing the bells have been around 7:05 a. m.?

A. I couldn't say. I didn't look at my watch. My watch stayed in my pocket all the time.

Q. By the Court: Do you recall as to whether it was close to the time of the impact or not?

A. Everything was so quick and my mind was on the boat all the time, and wasn't on my watch to look at the time.

(Testimony of Louis R. Ohiser.)

Q. Well, you say you discontinued ringing the bell for a while. You can't give us any idea, then, how close it was to the time of the impact?

A. Well, it was a little bit before, about, oh, it must have been, oh, five minutes or so before, something like that, it might have been.

Q. You don't know? A. Not exactly. [367]

Q. You don't know when it was?

A. What do you mean?

Q. You don't know whether it was 7 o'clock or 7:05 or five minutes to 7 or seven minutes after 7?

A. I didn't look at my watch at all.

The Court: You don't know. All right.

Q. By Mr. Adams: When was it that you commenced ringing your bell continuously?

A. As soon as I saw the ship made the hard right turn.

Q. You did not start ringing it continuously when you first saw the "Sakito Maru"?

A. Well, we was ringing it at intervals, the same, in rotation.

Q. You did not start ringing it continuously when you first heard a whistle from the "Sakito Maru"?

A. No; I was just ringing intervals.

Q. Do you recall testifying before the C. Board on the day of the collision, September 4, 1940, at San Pedro? A. I do.

Q. Do you recall being asked this question and giving this answer:

(Testimony of Louis R. Ohiser.)

“Q. How long before the collision did you say you heard the whistle?

“A. 20 minutes or better, because I heard it away off before I could even see the boat, and kept ringing the bell continuously.” [368]

Do you recall giving that testimony?

A. I think I do.

Q. How long before the impact did you see the “Sakito Maru”?

A. Well, I think it must have been about 10 to 20 minutes when I first saw it.

Q. You saw the “Sakito Maru” 10 to 20 minutes?

A. Somewheres in between.

Q. Before the impact?

A. Somewheres in between.

Q. Somewhere between 10 and 20 minutes?

Q. By the Court: Did you cease ringing the bell at any time after you saw the “Sakito Maru”?

A. I was ringing it at the regular intervals when it is foggy.

Q. During all that time that she was in your sight?

A. Well, I kept watching it all the time.

Q. I know, but the question is: Did you continue to ring the bell at all times after you saw the “Sakito Maru”?

A. At just the intervals it was.

Q. I know, at the intervals of rotation?

A. Of rotation; yes, sir.

Q. Then, during that period did you have any of these intermittents where you did not ring it?

(Testimony of Louis R. Ohiser.)

A. I don't think there was, because my mind was mostly on the boat, whether it was going to make a turn or whether [369] it was going to go straight, but I kept my hand on the bell at the same time.

Q. I know, but you have testified at least two different times that during the 40 minutes before the collision, that you ceased ringing the bell, that three of the boats ceased ringing the fog bell; but you don't know what part of that 40 minutes you ceased ringing?

A. No; I couldn't tell you what time.

Q. You say that this "Sakito Maru" was in your vision from 10 to 20 minutes?

A. Something like that.

Q. But what I am trying to ascertain is whether any time there, whether it was 10 minutes or 20 minutes, did you at any time during that period let up ringing your bell at intervals?

A. I wasn't sure exactly. I think I did. My mind was practically set on that ship, whether she was going to turn right or going beyond us.

Q. And at that time it was within your vision?

A. Yes, sir. I could see those two flags.

The Court: All right.

Q. By Mr. Adams: Do I understand you to testify, Mr. Ohiser, that after you had first sighted the "Sakito Maru" there was one occasion when you think you discontinued ringing the bell because your mind was focused on the "Sakito"? [370]

A. I might have been.

(Testimony of Louis R. Ohiser.)

Mr. Cluff: What was the answer, please?

(Answer read by the reporter.)

The Court: It doesn't mean very much one way or the other.

Q. By Mr. Adams: Now, you say that you sighted the "Sakito Maru" either 10 or 20 minutes before the collision. How far distant was the "Sakito Maru" from the "Olympic" when you first sighted the "Sakito"?

A. It seemed to me about five or six lengths of the "Sakito Maru".

Q. About five to six lengths? A. Yes, sir.

Q. It is your testimony, is it, that it took the "Sakito Maru" either 10 to 20 minutes to travel the five to six lengths?

A. I couldn't say. It might have been.

Q. Do you recall having testified before the coroner's inquest on September 6, 1940 at San Pedro?

A. I remember testifying something there.

Q. Do you recall being asked this question, or these questions, and giving these answers:

"Q. How close was it to the barge when you actually saw an outline of the prow of the ship? That is what you first saw, wasn't it?

"A. Yes. I saw a big black thing there about, oh, I [371] guess it would be five or six hundred yards or better, saw a big black thing in the fog.

"Q. Five or six hundred yards?

"A. Yes; better than that.

(Testimony of Louis R. Ohiser.)

“Q. Well, that is pretty near a half a mile.

“A. Yes, sir. And then it got kind of foggy and I kept ringing the bell more and more, and then that big black thing hit me in the face.

“Q. You rang it harder and harder?

“A. Yes, sir; continuously ringing it.”

Do you recall giving that testimony before the coroner's inquest? A. I do. [372]

Q. Do you wish to correct your testimony, Mr. Ohiser, as to the distance the “Sakito Maru” was away from the “Olympic” at the time you first sighted her?

A. That's the way it looked to me.

Q. How did it look to you?

A. Between five to six lengths away.

Q. Between five to six lengths away?

A. Yes.

Q. Did she also look to you like she might have been five or six hundred yards away?

A. I couldn't say; I didn't pay much attention about the yards.

Q. You recall having testified before the coroner's inquest that she looked like she was five or six hundred yards? A. Yes.

The Court: He has admitted that; we don't care to have any argument about it.

Q. By Mr. Adams: Now, Mr. Ohiser, you claim to have heard the propellers of the “Sakito Maru” before you sighted the “Sakito,” do you not?

A. Before I sighted—

Q. Before you sighted the “Sakito Maru”?

(Testimony of Louis R. Ohiser.)

A. I heard some kind of noise; I don't know exactly what it was. I thought it might have been the propellers, or something. [373]

Q. What was that noise?

A. I couldn't exactly say.

Q. What did it seem like?

A. It seemed liked propellers going.

Q. About how long prior to the collision was it that you heard that?

A. Not very long, I don't think.

Q. Can you give us an estimate?

A. No, I couldn't.

Q. Referring to your testimony before the same coroner's inquest, do you recall being asked this question, and giving these answers—page 21—

The Court: Counsel, aren't you attempting to impeach your witness on the questions you asked him yourself? There was nothing brought out on this on direct examination.

Mr. Adams: If the court please, I am endeavoring to show the inconsistency of this man's statement. I thought on cross examination I was entitled to show how inconsistent he was.

The Court: You asked the question; you brought it out yourself on cross examination.

Mr. Adams: This was not my witness, if the court please.

The Court: You have gone into matters that weren't even touched on in direct examination.

Mr. Adams: They are within the scope of the direct exam- [374] ination.

(Testimony of Louis R. Ohiser.)

The Court: All right. Proceed.

“Q. You did that as a warning, although you saw no vessel near?”

“A. I heard the vessel about 20 minutes before they hit us; I heard the vessel.”

Do you recall giving that testimony?

A. I do.

Mr. Montgomery: I object to that as not a proper method of cross examination.

The Court: I am going to admit it. I will stay until six o'clock until he finishes. I can stand it if the rest of you can.

Mr. Montgomery: As I understand it, the proper question is whether or not he so testified; not whether he remembers that he so testified.

Mr. Adams: Let me ask you that. Thank you, Judge Montgomery.

The Court: You have asked the question. I will hold you down to it. I have told you to go ahead.

Q. By Mr. Adams: Do you recall, Mr. Ohiser, that at the time your deposition was taken, on February 14, 1941, you testified in the manner in which I will read to you, on page 31:

“Q. Just a minute. You are getting ahead of your story. What was the next unusual thing that you saw or heard [375] after you heard these whistles at 20 minutes of 7:00?”

“A. I heard the sound of a boat.

“Q. You heard the sound of a boat?”

“A. Yes.

“Q. Will you be a little more explicit there?”

(Testimony of Louis R. Ohiser.)

What did you hear that told you it was the sound of a boat?

“A. I guess you would call it the water which the propeller gives. I guess that would be the sound you would hear.

“Q. Just describe the sound. Was it a swishing sound, a chugging sound, or what sort of a sound?

“A. Just the sound of the propeller in the water. I don't know how you would describe it, but that's what it would sound like.

“Q. About what time did you hear that sound?

“A. I never looked at my watch, only I just guess at it.

“Q. The best you can.

“A. About 10 minutes of 7:00.

“Q. How long before the collision, with reference to the collision?

“A. I don't know exactly the time of the collision. It was around 7:00 or after.

“Q. A little after 7:00?

“A. Yes.

“Q. About how long before the collision, according to your best recollection? [376]

“A. Between 10 and 15 minutes.

“Q. Between 10 and 15 minutes.

“A. Yes, as near as I can say.”

Do you recall having testified in that manner, Mr. Ohiser? A. I do.

Q. I believe you testified here, in answer to Mr.

(Testimony of Louis R. Ohiser.)

Cluff's questions, that when the "Sakito" seemed to turn hard to its right she was about five lengths away from the "Olympic," is that correct?

A. It is.

Q. How long was that before the actual impact?

A. Well, I just guess at it; at the time it seemed to be about——

The Court: I don't want any guesses as to the time. We have had enough guesses. If you don't know, say so; if you can't make a reasonable estimate, I don't want to hear it.

A. Everything happened so quick, I wouldn't know.

Q. By Mr. Adams: Did you testify in the manner in which I will read to you, at the time of the coroner's inquest, the same coroner's inquest that I previously indicated, on page 27:

"Q. How far was the vessel from the barge at the time it made this hard right turn?

"A. I couldn't tell you exactly. I know it was plenty [377] of time to miss the boat if they had made a hard left.

"Q. Can you approximate the distance in yards from the barge at the time it made the turn?

"A. Well, I can't, better than about two lengths of that boat, and the boat was approximately a block long or better.

"Q. About 300 feet?

"A. Something like that, yes, when I saw it turn."

(Testimony of Louis R. Ohiser.)

Did you so testify? A. I did.

Q. Referring to your testimony before the A Board, on September 6, 1940, will you kindly indicate, after I read this, whether you testified in the manner which I will read, before that body.

Mr. Cluff: Mr. Adams, I offer to stipulate that you may consider in evidence his A Board testimony and B Board testimony.

The Court: The court does not care to take up the time to read that testimony.

Mr. Adams: Page 245:

“Q. About how far distant from your barge was the ‘Sakito Maru’ when its heading was in the direction which you have indicated by diagram No. 2’——

Now, at this stage, I am going to ask the witness if this was an exhibit drawn by him before the A Board.

Do you recognize this diagram as one drawn by you at the [378] A Board hearing, September 6, 1940? A. Yes, sir.

Q. Is that your signature on there?

A. That’s my signature.

Mr. Adams: I will offer this in evidence, and ask leave to have a photostatic copy made, inasmuch as I am directed by Miss Esther Phillips to return this to her custody, if there is no objection.

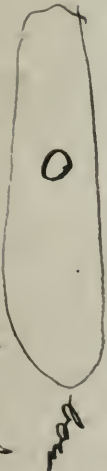
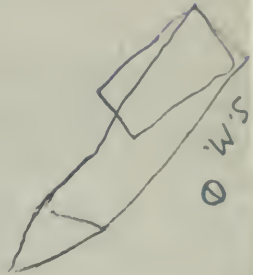
The Court: There will be no objection.

The Clerk: “Sakito’s” Exhibit D.

Exhibit 6

Docket No. _____	Commissioner's Exhibit No. <u>6</u>
In the matter of: <u>BARGE OLYMPIC II</u>	
Date: <u>9/6/40</u>	Witness: <u>CHASER</u> Reporter: <u>Judges</u>

No. <u>1138 15th adm</u>
vs.
<u>Ashto</u> EXHIBIT
No. <u>D</u>
Filed <u>SEP 17 1940</u>
R. S. ZIMMERMAN, Clerk
By <u>[Signature]</u> Deputy Clerk



F.R. Chiser.



(Testimony of Louis R. Ohiser.)

The Court: I would like to have the witness, as long as you have introduced that, explain this diagram, so the court will understand it.

Mr. Adams: I will be glad to read the portion of the A Board transcript—

The Court: I want the witness to explain it to me.

Q. By Mr. Adams: Mr. Ohiser, I show you this diagram, which is now marked "Sakito's" Exhibit D, and will you kindly explain what the various symbols shown on that diagram indicate?

A. This is the boat, the "Olympic."

Q. You are referring now to the object which appears just above your name? A. Yes.

Q. What is the object just above the "Olympic"?

A. The "Sakito Maru." [379]

Q. At what stage?

A. Coming directly for us.

Q. Was that at the time she made this right turn?

A. That's where it was, at that time. I was pretty well shaken up at that time. I did not know exactly what I was doing, after the accident.

Q. What does the object which is marked "SM-1" indicate? A. "Sakito Maru."

The Court: In other words, these two objects represent the two positions the boat was in?

A. Yes. I was pretty well shaken at that time, after the collision.

Q. By Mr. Adams: You say "SM No. 1" represents the "Sakito Maru." It represents it at the time you first saw it, isn't that correct?

(Testimony of Louis R. Ohiser.)

A. That's right, at the A Board.

Q. I would like to refer to this other diagram. I refer to the other exhibit, No. 7. Were you fully composed when you directed the drawing of that diagram by the use of the models?

A. I was in better shape.

Q. There was nothing, was there, about your condition that would have led to your being confused in having the models placed on the diagram and placed as you directed at that time? [380]

A. Very little.

Q. Referring to "Olympic No. 7," the position of the "Sakito Maru" indicates the position that you testified to at the time of your deposition, and represents the "Sakito" when you first sighted her, is that correct? A. Yes.

Q. And "Sakito No. 2" indicates the position of the "Sakito," as you testified to it at that time, after she had made the right turn? A. Yes, sir.

Q. What does "Sakito 1-A" represent, do you recall? A. The "Sakito Maru."

Q. At what stage?

A. Well, a little while before she made her turn.

Q. Can you tell us how far the "Sakito Maru" traveled between the positions "Sakito 1" and "Sakito 2" on this diagram, Olympic Exhibit No. 7?

A. Around about two or three lengths; something in that neighborhood.

Q. Two or three lengths of—

A. Of the "Sakito Maru."

(Testimony of Louis R. Ohiser.)

Q. It is your testimony then that the "Sakito Maru" was able, in two or three lengths, to assume the position of which you show here, as "Sakito 2," after she had been in the position shown for "Sakito 1," is that right? A. I think so. [381]

Q. Are you familiar with the turning circle of vessels? A. No, sir.

Q. You are an ordinary seaman?

A. I follow up the wiper down in the engine room, most of the time.

Q. Most of your experience aboard vessels has been in the engine room? A. That's right.

Q. You are not familiar with the maneuvers of vessels? A. No, sir.

Q. Are you familiar with navigation problems and situations?

A. I never took it up, no, sir.

Q. Referring to the testimony which you gave before the A Board, with reference to the distance that the "Sakito" was away from the "Olympic" at the time that she made this hard right turn, did you give this testimony:

"Q. About how far distant from your barge was the 'Sakito Maru' when its heading was in the direction which you have indicated by Diagram No. 2?

"A. About a length and a half of that boat.

"Q. About a length and a half of the 'Sakito Maru'? A. Yes, sir. [382]

"Q. How long do you estimate that boat to be?

(Testimony of Louis R. Ohiser.)

“A. Somewhere around a block or better.

“Q. Somewhere around a block or better?

“A. Yes, sir.

“Q. What do you think a block is?

“A. I couldn't say; four or five hundred feet.

“Q. Four or five hundred feet?

“A. Yes, sir.”

Did you so testify, Mr. Ohiser, on that occasion?

A. I did. I was getting pretty tired at that time. They had me on there for hours; I couldn't exactly know what I was doing.

Q. You were on the witness stand for hours before the A Board?

A. I thought that was the other one you mentioned.

Q. No, this was before the A Board hearing.

A. I was very well shaken up.

Q. I mean, did you so testify at the time?

A. I did.

Q. That was on September 6, 1940. Do you recall that to be the date? A. Yes, sir.

Q. Now, referring to your testimony at the time your deposition was taken on February 14, 1941, will you indicate, after I have read this, whether you testified in this manner, on page 136: [383]

“Q. Now, you have indicated another position for the “Sakito Maru”, which is marked on Petitioner's Exhibit No. 1 as “Sakito No. 2.”

(Testimony of Louis R. Ohiser.)

About how long a period of time elapsed before the collision when the "Sakito Maru"—

"A. I couldn't say.

"Q. —was in that position?

"Mr. Cluff: Wait a minute. You said 'I couldn't say' before he finished his question, so take your time, and think about it a little bit.

"(Record read by the reporter.)

"Q. By Mr. Adams: In other words, Mr. Ohiser, when the 'Sakito Maru' had reached the position which you have indicated on Petitioner's Exhibit No. 1 as 'Sakito N. 2' how much time elapsed until the collision, to your best recollection?

"A. Oh, a few minutes; something like that.

"Q. How far distant was the bow of the 'Sakito Maru' from the port side of the 'Olympic II' at that time, according to your best recollection?

"A. I couldn't say. I was just watching that point coming toward me. It kind of upset me, at the time she was coming.

"Q. Did it seem like she was two or three ship lengths away?

"A. Something like that.

"Q. When I say ship lengths, I mean 'Sakito Maru' ship [384] lengths.

"A. Yes; that's when she made the turn.

"Q. Did you watch her as she proceeded from the position that you have indicated as

(Testimony of Louis R. Ohiser.)

‘Sakito 1’ until she got in the position you have indicated as ‘Sakito 2’?

“A. I kept watching her at all times.

“Q. Will you indicate, by the use of the models, by following—just moving the models so as to indicate how she made that turn, so as to get in that position? Can you move that model ahead so as to put her in the position No. 2 from position No. 1? Will you do that again, and stop when you get about midway between those two? Will you just follow that procedure again? And then stop when you get midway between the ‘Sakito No. 1’ and ‘Sakito No. 2’ to show the course of her turn? In other words, I am trying to get the position of her about midway between the positions you have marked ‘Sakito No. 1’ and ‘Sakito No. 2’. Will you indicate by the maneuvering you have gone through with the model?

“Mr. Cluff: Do it slowly, and stop when you get to the stop mark; move it from one to the other, just as you saw the ship turn.

“Mr. Adams: Stop it there.

“Mr. Cluff: Let’s hold it here.

“Mr. Adams: I am going to mark that ‘Sakito 1-A’.”

Mr. Adams: Will you stipulate, Mr. Cluff, that the diagram which you have indicated as “Olympic” No. 7, contains [385] this object which we marked

(Testimony of Louis R. Ohiser.)

“Sakito 1-A” at the time the deposition was taken?

Mr. Chuff: Yes.

Q. By Mr. Adams: Did you, Mr. Ohiser, in the manner in which I have just read it, at the time your deposition was taken? A. I did.

Q. Mr. Ohiser, when did you first commence standing lookout aboard the “Olympic” that morning?

A. Oh, between—it must have been about—do you mean at the bell?

Q. What do you conceive the duties of the lookout to be?

A. I was lookout all night long for the vessel.

Q. What were you doing as lookout, let’s say, from daylight on?

A. I walked around the deck, and kept my eyes peeled for anything coming close.

Q. Did you continue to do that up until the time of the collision?

A. I kind of stopped when it started to get foggy and stood by the bell, ringing the bell.

Q. And you continued to stand by the bell as long as it was foggy? A. Yes.

Q. Now, while you were continuing to act as lookout, and ringing the bell, you left your position on the deck, and went [386] into the restaurant, and ate breakfast, didn’t you?

A. That was after my hours were up.

Q. That was around 6:30 o’clock? A. Yes.

Q. While you were still standing lookout, wasn’t it? A. After six o’clock.

(Testimony of Louis R. Ohiser.)

Q. After six o'clock? -

A. Yes. I was through at six o'clock; my duties were done at six o'clock; but I said to the boys that I would stay and give them a little hand.

Q. Who was supposed to be on duty after six o'clock? A. The day crew.

Q. Who was supposed to sound the fog bell, if there was fog, after six?

A. I couldn't tell which one. They didn't tell me which one did it. I suppose the closest one to it, I believe.

Q. Did anyone come over to the fog bell, after you started ringing it, at six o'clock, and discuss with you whether you should continue ringing it, or he should start ringing it?

A. No, I did it of my own free will, to help them out.

Q. Incidentally, I believe you testified that after the "Sakito Maru" started to turn hard right, you started to ring the bell continuously, and Mr. Greenwood ran up and told you to ring it hard?

A. Yes, at that time, yes, sir. [387]

Q. Then he left? A. Yes.

Q. He did not help you ring the bell?

A. He took hold of it and we both kept going; then he quit and ran; he knew that the thing was going to hit us, I believe. I didn't ask him any questions.

Q. He didn't stay there very long?

A. No, a very short time.

(Testimony of Louis R. Ohiser.)

Q. Isn't it true, Mr. Ohiser, that up until the time you started to ring this bell continuously you were just giving light taps on that bell?

A. Continuously?

Q. No, I mean from the time you started ringing the bell continuously, when you were ringing it at intervals, following suit with the other barges?

A. I gave the ring I always gave.

Q. It was a light tap, wasn't it?

A. A little lighter than it was when the boat was coming toward us.

Q. The purpose of this distinctive ringing of the bell on the other barges was to attract the shore boats of the respective barges, isn't that true?

A. The shore boats, and those passing vessels.

Q. What was the purpose of the distinctive bell in reference to passing vessels?

A. So they would know there was more than one there, when [388] they heard it.

Q. Just what was it about the bells that indicated there was more than one?

A. As the "Rainbow" gave that ring, he would stop, and another would start right in and give one, a short one, and right afterwards I would give two short, and they would know there was three there; they could go by the sound.

Q. Is that something provided by the rules of the road? A. I think it is.

Mr. Cluff: I object to interrogating this witness on the rules of the road.

(Testimony of Louis R. Ohiser.)

The Court: I think there is a limit to cross examination. I gave you five minutes to shorten it up, and I think you just used it to get more ammunition.

Mr. Adams: I think I have got plenty.

The Court: I don't know about that, but when you said you were going to shorten it up, I think you misled the Court.

Mr. Adams: I did not mean to on that.

The Court: Proceed, but there is a limit to the cross examination. The Court does not have to sit here indefinitely and listen to it.

Mr. Adams: I don't want to tax the patience of the Court.

The Court: You have just about.

Mr. Adams: I am sorry if I have, but I have considered my interrogation material, and I thought it demonstrated the important features of this case. I am not just talking to be [389] talking, if the Court please. No further questions.

Mr. Eastham: May I ask a question, your Honor, since this witness is a sailor, and may not be here?

Q. I understand you to say just now, that you looked back at the "Olympic", after you got to the water taxi? A. I did.

Q. And saw young Joe Culp and the others?

A. I did.

Q. On the barge "Olympic"? A. Yes.

Q. What did you see about them?

A. It happened so quick; they disappeared in the water.

(Testimony of Louis R. Ohiser.)

Q. They disappeared in the water?

A. Yes, with the barge.

Q. The barge sank right under them?

A. Yes; they went with it.

Q. You haven't seen Culp or the other people since?

A. I haven't seen nobody since.

Mr. Eastham: That is all.

(Discussion omitted from the record.)

(Adjournment until Thursday, September 18, 1941, at 9:30 a. m.) [390]

Los Angeles, California,
Thursday, September 18, 1941. 9:30 a.m.

(Appearances have been heretofore noted.)

The Court: Proceed.

Mr. Cluff: Mr. Stiles.

STANFORD ROBERTS STILES

called as a witness on behalf of libelant, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Stanford Roberts Stiles.

Direct Examination

Q. By Mr. Cluff: Mr. Stiles, you were captain of the "Lillian L" at the time of the collision between the "Olympic" and the "Sakito Maru"?

(Testimony of Stanford Roberts Stiles.)

A. Yes, sir.

Q. That was one of the ships of the *Hermosa* Amusement Company, by whom you were employed?

A. Yes, sir.

Q. In the morning of the collision what time did you make your first trip from Cabrillo Beach?

A. We left Cabrillo Beach on the morning of the collision in the neighborhood of 6:25.

Q. And arrived at the barge at what time?

A. Approximately 7:05. [391]

Q. At approximately 7:05? A. Yes, sir.

Q. That was by the clock, by the "Lillian L's" clock? A. Yes, sir.

Q. Was that clock approximately right.

A. Well, pretty close.

Q. On the morning, as you were coming out to the "Lillian L" ("Olympic"), what was the condition of the weather? A. Foggy.

Q. Or coming out to the "Olympic"?

A. Foggy.

Q. And about what was the visibility?

A. Well, it wasn't any set amount. It would vary anywhere from 500 to——

Mr. Cluff: May I have the answer, please?

Mr. Adams: He isn't finished yet.

Mr. Cluff: Oh, pardon me.

A. It would vary anywhere from—visibility, I would say, would vary from three to eight hundred yards.

Q. Three to eight hundred yards. As you ap-

(Testimony of Stanford Roberts Stiles.)

proached the barges did the visibility increase or grow less?

A. Well, that I couldn't say because I observed the barges, which was on the course, and I didn't pay much attention to the visibility at that time.

Q. What was the first barge you saw as you came out? [392]

A. "Point Loma".

Q. And when you came up to that—could you make out the "Olympic" before you reached the "Point Loma", could you see the "Olympic"?

A. Yes.

Q. About how much before you reached the "Point Loma"?

A. I couldn't answer that for sure.

Q. But it was some time before you reached the "Point Loma"?

A. Yes.

Q. Did you pass around the bow of the "Point Loma" or around the stern?

A. Around the bow.

Q. When you came to the bow of the "Point Loma" could you see the "Olympic" clearly?

A. Yes.

Q. Did you happen to look in the direction of the "Rainbow"?

A. No.

Q. Do you know how far the "Point Loma" was from the "Olympic"?

A. The "Point Loma", I would say, would be in the neighborhood of 500 yards.

Q. As you were coming out to the "Olympic" could you hear the bells from any of the barges?

(Testimony of Stanford Roberts Stiles.)

A. I never did at any time when I was working ahead. [393]

Q. What is that?

A. Not at any time while I was going ahead.

Q. Is there any reason why you can't hear the bells?

A. The engine is rather noisy, the exhaust and the muffler.

Q. You were down in the cabin at your controls?

A. Yes, sir.

Q. By the way, how many passengers did you have? A. Four, going out.

Q. Four, going out. And did you have a deck hand? A. No.

Q. You were alone? A. Alone.

Q. As you came alongside the barge which direction did you head?

A. To make a landing alongside?

Q. Yes. A. To the west.

Q. You headed west? A. Yes, sir.

Q. That is, the bow of the "Lillian L"—you circled around and the bow of the "Lillian L" headed in the same direction as the bow of the "Olympic"? A. Yes, sir.

Q. Then did you tie up?

A. Yes, sir. [394]

Q. With what lines?

A. Spring line, just a spring line.

Q. A spring line, that is a line that leads from a forward chuck back?

(Testimony of Stanford Roberts Stiles.)

A. The spring line is secured to the gangway on the barge and sets there on a peg, and when you come alongside you take it off the peg and put it on the *bitt* of the boat.

Q. I wonder if you would just show the court how a spring line is, how it is attached. [395]

State how a spring line attaches. Let us say this is the side of the landing. We will draw in a little boat here. Will you put on the spring line?

A. Here is the bit, right in the bow, and the spring line is secured to the gangway rail with a spring attached to the main part of the vessel, that leads through here, and around. There is an eye on the end of the spring line, which goes over the bit like this, and we keep the engine going ahead, and the rudder hard over.

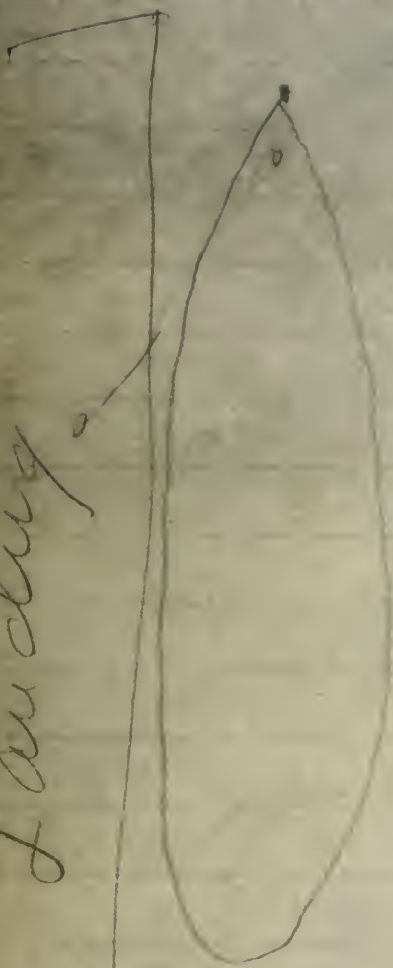
Q. As the engine goes ahead it pushes on the spring?

A. Yes; the nose holds the bow, and the propeller holds the stern in.

Mr. Cluff: I will offer the diagram drawn by the witness in evidence, as "Olympic's" next exhibit.

The Clerk: "Olympic" No. 8.

Landry



No. <i>1138-1942</i>	vs.	<i>Wynne</i>
		No. <i>8</i>
		Filed SEP 18 1942
		U. S. CLERK
		<i>Wynne</i>
		U. S. CLERK

NO. *1138-1942*
 UNITED STATES CIRCUIT COURT OF APPEALS
 FOR THE NINTH CIRCUIT
FILED

JUL 13 1942

PAUL F. O'BRIEN,
CLERK

(Testimony of Stanford Roberts Stiles.)

Q. By Mr. Cluff: You left your motor idling, and your gear turning over slowly against the spring? A. Yes.

Q. Then your passengers disembarked, I suppose? A. Sir?

Q. Your passengers went aboard the barge?

A. Yes, sir.

Q. When you arrived at the "Olympic", and slowed down your engine, could you hear her bells?

A. Yes.

Q. How were they ringing them? [396]

A. At first they were ringing at intervals.

Q. Did you hear any break in the interval? That is, did the barge stop ringing its interval ring at any time? A. Yes, it did.

Q. Explain just how it did stop?

A. Well, it would ring in the neighborhood of five or six, or possibly seven, seconds, and there was an intermission there of possibly 30 or 40 seconds; then they would ring a like amount again.

Q. It was in intervals of 40 seconds?

A. About that, yes.

Q. Then, did you follow your passengers on deck? A. Yes.

Q. Where did you go, as you came on deck? I will let you see the photograph of the ship here. By the way, as you came on deck, was there any change in the ringing, as you had heard it in these intervals?

A. When I first came aboard the bell started ringing continuously.

(Testimony of Stanford Roberts Stiles.)

Q. That was constant ringing, without any interval there? A. Yes, sir.

Q. Where did you go when you came aboard? This is the port side, of course.

A. This is opposite the gangway. The gangway is just about opposite the galley. [397]

Q. About opposite the mizzenmast?

A. Kind of companionway. The poop deck extends over, and you come up the gangway, which is on the other side, and there is a door here, which leads into the galley.

Q. You were going to get a cup of coffee, I understand? A. Yes.

Q. You went into the passageway?

A. I came into the passageway, to the door, and a little girl told me about the ship.

Q. Was the little girl one of Joe Karsh's daughters? A. Yes.

Q. The little girl Shirley? A. Yes.

Q. Where was the girl?

A. Somewhere in this neighborhood, of the companionway.

Q. That is, the passageway? A. Yes.

Q. What was she saying, if anything?

Mr. Adams: I object to that upon the ground that no proper foundation has been laid; incompetent, irrelevant and immaterial; and hearsay.

The Court: It is hearsay.

Mr. Cluff: All right. The little girl said—

The Court: Of course, that applies to this deposition I read last night, to about 99 per cent of it.

(Testimony of Stanford Roberts Stiles.)

Mr. Adams: I will be glad to argue that point, if the [398] court please.

The Court: If this is hearsay, I would like to know why in any portion of Moynahan's deposition it is not hearsay. He talked to somebody on the "Point Loma", and to somebody on some other boat. It is all in the evidence. Go ahead.

Q. By Mr. Cluff: After you spoke to the little girl, what did you do? Did you leave anywhere?

A. Yes, I went over and looked.

Q. You looked when you were over on the port quarter-side?

A. To see if there was a ship approaching, as I was told.

Q. Never mind that. What did you see?

Mr. Adams: If the court please, if Shirley Karsh simply notified the witness of the approach of a vessel, I do not concede that to be hearsay, because it is not offered to prove that a vessel was approaching, but simply to give this witness notice. That is the same theory upon which I intend to argue about the hearsay rule in the Moynahan deposition. In view of the witness' statement just now that she simply notified him that a vessel was approaching, I withdraw my objection upon the ground that it is hearsay.

The Court: Proceed.

Q. By Mr. Cluff: You looked out the port side, and [399] saw what?

A. A Japanese freighter approaching.

(Testimony of Stanford Roberts Stiles.)

Q. Was that the "Sakito Maru"?

A. Yes.

Q. How did the Japanese freighter appear to you, as you were standing on the port alleyway?

A. I stepped out, and he appeared to be coming in this angle.

Q. Making an angle of about——

Mr. Adams: I would rather have the witness indicate it better than just putting his hand against the photograph.

Mr. Cluff: Let us get at it in another way. I am going to show you "Olympic" Exhibit No. 4. I will point to a shape that shows the "Olympic", and ask you to take my pencil and make a cross at about the point, not with regard to distance, but to bearing, at which you saw the Japanese freighter approaching, this being the port side.

A. I observed it from here.

Q. Will you draw a line toward the angle where you saw it approaching?

A. He was not headed exactly for where I was located. He was headed up in this general locality.

The Court: Draw the angle he seemed to be approaching the vessel.

Mr. Cluff: You have drawn an arrow, and we will write in the word "Stiles". We have got an "S" here before. [400] The witness has drawn an arrow to the port of the shape of the "Olympic", to which I have written the name "Stiles".

Q. How far was she at the time you first saw her?

(Testimony of Stanford Roberts Stiles.)

A. As I recall, it was in the neighborhood of between 100 and 150 yards.

Q. Was all the ship clear to you?

A. No, the bow was principally the main thing that loomed up to me. [401]

Q. Was the rest of it obscured in any way?

A. It was at an angle where I couldn't see the whole vessel.

Q. You could see the whole of the starboard side? A. Yes.

Q. And the masts?

A. I don't recall seeing the masts.

Q. You were not conscious of the masts?

A. No, I am not.

Q. How long have you been going to sea, Mr. Stiles?

A. I haven't been going to sea; I have been working around small boats.

Q. I mean going to sea around the harbor.

A. Ever since I was about ten years old.

Q. You are how old now?

A. Twenty-seven.

Q. Have you been engaged in operating water taxis, and boats like the "Lillian L"?

A. Yes, sir.

Q. For how many years? A. Eleven.

Q. Eleven years constantly? A. Yes.

Q. Do you hold any licenses by the Sea Boat Inspection Service or by the Bureau of Navigation, rather? A. Yes. [402]

(Testimony of Stanford Roberts Stiles.)

Q. What license?

A. At present I hold a motor boat operator's, and I have just passed an examination for pilot, San Pedro.

Q. You passed the examination? A. Yes.

Q. I congratulate you. I knew you were taking them yesterday. That is pilot what class?

A. Second, 150 tons.

Q. It gives you the right to handle vessels up to what size? A. 150 tons.

Q. In your experience have you had occasion to determine the speed of vessels moving in the harbor, or moving about in the water?

A. Oh, yes.

Q. How fast was the "Sakito Maru" going at the time you saw her there?

Mr. Adams: That is objected to upon the ground that it calls for the conclusion of the witness; no proper foundation laid; incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Cluff: Let me ask you a preliminary question: How long did you stay there and continue to watch her?

A. Just long enough to observe that there was a collision coming up.

Q. Were you able to form an estimate of how fast she was [403] going?

Mr. Adams: That is objected to upon the same ground; upon the further ground that the witness

(Testimony of Stanford Roberts Stiles.)

has just indicated by his own testimony that he did not try to observe her, and further, his estimate must be based upon only speculation.

The Court: Overruled.

Mr. Cluff: Answer the question.

A. The question again, please?

(Question read by the reporter.)

A. Yes, I observed that she was moving right along from the boil on the bow.

Q. She was rolling a bow wave? A. Yes.

Q. And you knew how fast she was going?

A. This is a calculation, eight to ten knots; that isn't exact.

Q. That is your estimate, eight to ten knots?

Mr. Adams: Same objection to the whole line of examination.

The Court: Overruled.

Q. By Mr. Cluff: Did she change her heading?

A. Not that I observed.

Q. At any time while you saw her?

A. I did not look long enough to see.

Q. On that heading, when you first saw her, was she headed so that if she continued on that course she would strike the [404] barge?

A. Yes, sir.

Q. What did you do next after having seen the ship?

A. I hollered out to the people that were fishing on the port side, to come back quick.

Q. Come back?

(Testimony of Stanford Roberts Stiles.)

A. Come back, meaning to come back where I was.

Q. Then what did you do?

A. Then I made, as quick as I could, to the shore boat, which was on the other side.

Q. That is, you went out through the alleyway, which was on the starboard side, down the gangway?

A. Yes.

Q. Were you followed by any people?

A. Yes.

Q. How many?

A. Immediately I was followed by the little girl, Shirley Karsh, and just a few seconds later six more passengers.

Q. Can you give us any idea of how many feet it was from where you were standing and saw the ship, to the gangway?

A. It was almost the breadth of the ship. She was 38 feet, so I would say 35 feet, anyway, or 34.

Q. Then you went down the steps of the gangway, to the lower landing? A. Yes.

Q. You got on the "Lillian L"? [405]

A. Yes.

Q. What did you do with the lines?

A. The first thought, when I got aboard, was that I had to get the spring line off, and that I did as soon as possible.

Q. Now, did any passengers get aboard the "Lillian L" or any people?

A. Before I got away?

Q. Yes. A. Seven.

(Testimony of Stanford Roberts Stiles.)

Q. Seven people came aboard?

A. Yes, sir.

Q. Including little Shirley Karsh?

A. Yes.

Q. Were they on board before the impact, before the collision?

A. Shirley was, I am quite sure, and I couldn't say about the others. I don't think they were.

Q. Where were you at the moment the impact came?

A. Just starting in the wheel house. I had——

Q. Of the "Lillian L"? A. Yes, sir.

Q. Will you describe the effect of the impact?

A. When the "Sakito Maru" first rammed the "Olympic", why the "Olympic" keeled way over. The uprights on the outer part of the gangway, which are as high as the bulwarks on the barge itself, went down below the deck of the "Lillian L", and [406] at the same time she was moving broad-side very rapidly.

Q. That is, the "Olympic" was moving broad-side? A. And the "Lillian L".

Q. Was the impact such that you were able to hold your feet or——

A. No. The immediate impact knocked me off my feet.

Q. Then what did you do?

A. As soon as I regained my equilibrium, why, I went on in to the wheel and I looked back through the window and saw that some passengers were getting on. [407] So I shut the power down as soon

(Testimony of Stanford Roberts Stiles.)

as I got in the wheelhouse. I blasted, of course, for full ahead, but I saw I was going to take on some passengers so I backed it on down but still had it in gear.

Q. Still had it in gear, but slowed down the engine?

A. Yes, sir. After I saw that all were on board that were going to get on board at that moment I gave it full ahead again and I was held there for a number of seconds before I could get clear.

Q. Could you tell what it was that held you?

A. I imagine the side motion.

Q. The sideways motion? A. Broadside.

Mr. Adams: I move the answer be stricken on the ground it is speculative.

The Court: It is speculative. He imagines. It may be stricken.

Q. By Mr. Cluff: Do you know whether or not the "Lillian L" was caught under the floor of the platform by the heeling of the "Olympic"?

A. It was caught.

Q. It was so caught? A. Yes, sir.

Q. Can you form an estimate of how far sideways the "Olympic" and your "Lillian L" were driven before she got free? [408]

A. That is an estimate. I would say in the neighborhood of 300 feet.

Q. Then what happened?

A. Then I got free.

Q. That is, you just found that the boat was free. What did you do then.

(Testimony of Stanford Roberts Stiles.)

A. She had lost her momentum enough then that I could pull away.

Q. Then you speeded up and pulled away?

A. And pulled away.

Q. How did you direct the course of the "Lillian L" as you pulled away?

A. In a circle. That would be hard over right.

Q. By the way, the other Karsh girl, Lillian, do you remember of seeing her?

The Court: Is that of any materiality?

Mr. Cluff: I don't think it is so material.

The Court: Then why go into it?

Mr. Cluff: The little girl was confused and I thought maybe we could straighten it out. I don't know as it is very material.

The Court: I know, but the little girl got aboard the boat and that was all there was to it.

Mr. Cluff: This was the other girl who testified on the stand that I was talking about.

The Court: I know. [409]

Mr. Cluff: I won't go into it.

Q. After pulling away from the side of the "Olympic" how did you handle the "Lillian L"?

A. I kept her in a hard right position, the rudder.

Q. So she circled around?

A. To make a circle and come back alongside.

Q. Yes. Go ahead now in your own way and tell us what you observed.

A. I started to make a circle and I saw I couldn't

(Testimony of Stanford Roberts Stiles.)

make it or make the turn because the ship still had momentum in a side motion.

Q. That is, the radius was too small to permit you to turn around?

A. Yes, sir. Ordinarily, under normal conditions, you can do that; but inasmuch as the barge had way, going sideways, I couldn't make the turn; so I started to back down and the boat was rather clumsy and under-powered for her weight. I observed a water taxi just to the west a little ways and I blew a bunch of short blasts.

Q. That is, a little ways to the west of the "Olympic"?

A. West of me.

Q. To the west of you.

A. He was not directly west of the "Olympic", in a westerly direction.

Q. That was the water taxi "H-10" of——

A. No. 7 or 17, or something. [410]

Q. Of Captain Smith's? A. Yes, sir.

Q. Then what happened? What did the "H-10" do?

A. When I saw that attracted his attention, I motioned for him to go alongside the gangway, which he did immediately.

Q. He came in with his bow in which direction?

A. East. From the west, he ran his bow right into the east, alongside the gangway. [411]

Q. At that time were you moving in the "Lillian L" or adrift?

(Testimony of Stanford Roberts Stiles.)

A. No; I checked the way.

The Court: These maneuvers at this time are not so material. We have had enough testimony on that. I am interested now about the sinking of the boat. Let us get down to that.

Mr. Cluff: All right.

Q. Will you describe, Mr. Stiles, just what you saw in connection with the sinking of the "Olympic" and any moves of the Japanese steamer after you were able to observe, after getting away from the side of the ship?

Q. By the Court: Did you keep your eyes on both of the boats? Did you keep your eyes on the "Olympic" and the "Sakito Maru"?

A. No; I didn't; just the "Olympic".

Q. By Mr. Cluff: I mean as you were lying there after getting away?

A. As I was lying there, the last time I observed the Japanese vessel, her bow was over halfway through the "Olympic". And then I was interested mainly in getting away from there with the boat I was operating.

Q. By the Court: You did not see, then, the "Sakito Maru" withdraw?

A. No; I didn't. I made the circle and I was interested in getting the passengers off, because I saw that she had a [412] big hole in her bow and I saw that the "Sakito" was gone. I didn't see it any more, but I saw that it was gone, and I knew that she had the big hole and figured it would be

(Testimony of Stanford Roberts Stiles.)

just a matter of a very few minutes until she sank. So I was interested in getting the water taxi over there, and he did get alongside as quick as anything.

The Court: Let us not go into the rescue of these people.

Q. By Mr. Cluff: Did you see the "Olympic" sinking? A. Yes.

Q. As you pulled away from the side the first time you saw her after she pulled away how much freeboard did she have on the starboard side there that you could see?

A. After I had made the circle?

Q. After you had pulled away and the first time you saw her afterwards?

A. Well, she looked like she had about the same, the same as she normally had.

Q. About the same as she normally had?

A. Yes, sir.

Q. Did you see her settling in the water?

A. Yes, sir.

Q. Did she settle slowly or rapidly?

A. Rapidly.

Q. By that time the Japanese steamer was gone?

A. Gone. [413]

Q. You saw her go down with your own eyes?

A. Yes, sir.

Q. With the "H-10" still alongside?

A. Yes, sir.

Mr. Cluff: That is all.

(Testimony of Stanford Roberts Stiles.)

Cross-Examination

Q. By Mr. Adams: Mr. Stiles, what was the normal freeboard of the "Olympic"?

A. Well, we—that I don't know.

Q. Then how could you tell that her freeboard at the time you saw her was just normal? You meant it looked just the same as before, is that what you meant?

A. Judging from the water line; yes.

Q. As I understand your testimony, as you approached the barges that morning you could not hear their bells?

A. I never heard until I got there.

Q. When you say "until you got there" do you mean until you got alongside the "Olympic"?

A. Yes, sir, until I was making the landing.

Q. That was the first time you heard the bells of any barge?

A. No. I heard the "Point Loma" as I went by there.

Q. How close did you pass by the "Point Loma"?

A. 50 feet.

Q. And about how many times did you hear the "Point [414] Loma" bell ring while you were passing?

A. Once, I believe.

Q. Just once. How close were you to the "Olympic" before you heard her bell?

A. Possibly 200 feet.

Q. Your engines were still going then?

(Testimony of Stanford Roberts Stiles.)

A. Yes, but slow.

Q. But slow. In other words, you had cut down your engine, is that it? A. Yes, sir.

Q. At that point? A. Oh, yes.

Q. Then you came alongside the "Olympic" and discharged your passengers, did you not?

A. That is right.

Q. In making your landing alongside the "Olympic" was it necessary for you to put your engines in reverse? A. Yes, sir.

Q. You could not hear the "Olympic" bell while your engines were in reverse, even though your ship was alongside, could you.

A. Yes; you could, providing you were going in reverse slow.

Q. Well, did you? Did you hear them while your engines were in reverse, while your "Lillian L" was alongside the "Olympic" that morning? [415]

A. That I couldn't say, because just for maybe 30 seconds that you are in reverse. It may not be that long.

Q. How much of an interval elapsed between the bell that you heard immediately before you put your engines in reverse and the next bell that you heard after you took your engines out of reverse?

A. That I couldn't say right now.

Q. You have had experience when you have been alongside the "Olympic" under conditions similar to these, when your engines were in reverse and you

(Testimony of Stanford Roberts Stiles.)

couldn't hear the "Olympic" bell, is that right?

A. I couldn't say to that. We never stay in reverse alongside.

Q. Do you recall testifying before the A. Board on September 6th? A. Yes, sir.

Q. So that you recall giving this testimony at that time:

"Q. What was the intervals between the time he rang?

"A. When I was first approaching I could hear her ringing, and then when I was in reverse I couldn't hear it. Whether I was—I heard the bell ringing constantly. It was ringing constantly when I went on deck and the closer the Jap ship approached the barge the harder the bell rang."

Does that refresh your recollection as to whether or not you could hear the "Olympic" bell while you were in [416] reverse that morning?

A. No; it doesn't refresh it any, because I don't remember hearing any bell in reverse.

Q. Your testimony simply is that while you were in reverse you didn't hear any bell? A. Yes.

Q. And what was the longest time that you were in reverse while you were making a landing?

A. I didn't time it, but it never runs over 20, or possibly 30 seconds at the most.

Q. You spoke about the intervals between the bells of the "Olympic" when you did hear them. Upon what basis did you make the estimate of time?

(Testimony of Stanford Roberts Stiles.)

A. Well, it was pretty close, you can judge pretty close by the ring of the bell and then the interval in between. You ring the bell six seconds and your interval runs approximately eight times that, or seven times it.

Q. You mean that would be what the interval should be if one abided by the law?

A. That is right.

Q. Is that what you mean?

A. Well, that is about what the interval was in this particular case. The law calls for four to six seconds every minute.

Q. Did you time any of the intervals with a watch?

A. Not on that particular day, but I have timed it. [417]

Q. Did you ever time any bells that Mr. Ohiser rang?

A. I couldn't say for sure, although I have checked it occasionally.

Q. But you don't know whether Mr. Ohiser was ringing the bell?

A. I know he was ringing the bell that morning.

Q. I mean on other mornings when you did check it?

The Court: It has been asked and answered.

A. No; I couldn't.

The Court: He has answered it.

Q. By Mr. Adams: How long after you first observed the "Sakito" approaching the "Olympic"

(Testimony of Stanford Roberts Stiles.)

did you stand there and watch the "Sakito" approach?

A. Just long enough to observe that it was going to collide with the "Olympic". And I——

Q. That really does not give us any idea as to how long you remained there. Can you estimate it in terms of time?

The Court: If you can.

Mr. Adams: If you cannot——

A. Of course, that is a tough estimate, because when you see something coming at you you are not going to estimate how long you are standing there, looking at it.

Q. You did not remain there very long, did you?

A. No; just long enough to observe that—the first thing I saw was the Japanese flag, and then I raised my eyes [418] to look at the superstructure; and when you are looking at something like that, of course, if there is boiling on the bow, that is the first thing you observe, too, that is one of the things.

Q. Did the "Sakito Maru" appear to be emerging from fog when you saw her?

A. Emerging from fog?

Q. Yes. A. Well, there was fog all around.

Q. There was fog all around? A. Yes, sir.

Q. You say you were not conscious of having observed her masts? A. No.

Q. Do I understand your testimony to be that your estimate that the "Olympic" was driven about 300 feet through the water before the "Lillian L" got free, and you were able to pull away?

(Testimony of Stanford Roberts Stiles.)

A. Roughly, yes.

Q. Did the "Olympic" come to rest very shortly after that?

A. Yes; pretty shortly. It depends, of course, on what you mean by "shortly".

Q. Well, what do you mean by "shortly"—on that occasion I mean?

The Court: I think the question calls for an answer [419] that is hard for anybody to give that means anything. I think you should pin it down to the time. There is a lot of criticism of "shortly" and "quickly". [420]

Mr. Adams: I am trying to arrive at terms of feet.

Q. Can you give us any estimate of how much further she might have gone through the water after you did get free?

A. No; I couldn't, because I was under way myself and that is pretty hard to say. When it is chasing you, why you can't very well judge just what it is doing.

Q. When you next looked at the "Olympic" was her momentum checked?

A. Pretty much so; yes.

Q. Where were you when you made that observation?

A. Off the starboard quarter.

Q. About how far forward had you gone?

A. Forward?

Q. Yes; when you made the observation.

A. I am referring to after the barge, after it

(Testimony of Stanford Roberts Stiles.)

being—I made a circle hard right and the boat would circle in approximately 400 feet, not over that.

Q. And at that time after you made the first attempt to circle did you observe the “Olympic”? That was the first time you observed her after you pulled away?

A. You see, I went around hard right, left it hard right and went around, and of course, I observed it to make a landing again and saw that I couldn't do it.

Q. Was she at rest at that time?

A. I couldn't say for sure. [421]

Q. You were not conscious of any movement through the water?

A. Well, I couldn't say that, inasmuch as I was conscious of the boat I was on, that I couldn't make the turn and I had to back down. So, whether it was on account she still had way on or not, I don't know.

Q. The landing on the starboard side of the “Olympic” was near the after end, was it not?

A. That is right.

Q. Were you conscious of the “Olympic's” stern swinging in an arc? In other words, did the stern—

A. No.

Q. —of the “Olympic” seem to be moving to you more than the bow?

A. No. It seemed to move just directly broad-side, not pivoted. I imagine that is what you mean?

Q. Yes. Well, after you came around on a hard

(Testimony of Stanford Roberts Stiles.)

right and observed the "Olympic" again was her heading the same as she headed when she rode at anchor before the collision?

A. Approximately so.

Q. Did her heading change any before the barge sank, from her original heading?

A. Very little.

Q. On what portion of the port side of the "Olympic" did the "Sakito Maru" come in contact?

A. Just forward of the pole rack which, according to [422] this picture, looks approximately amidship.

Q. Will you indicate it on there?

A. Right here.

Q. You are referring now to—let's see. This is—

The Court: Exhibit 4 "Olympic".

Mr. Adams: Let me see.

Mr. Cluff: This isn't 4. This is "Olympic's"—

Mr. Adams: No; that is the other.

Mr. Cluff: Oh, here we are. This is the "Olympic's" 1.

The Court: 1.

Q. By Mr. Adams: Will you point out—

A. Right here.

Mr. Cluff: Indicating a point just forward of the main mast.

Mr. Adams: Yes.

Q. I believe you stated that the "Sakito's" bow

(Testimony of Stanford Roberts Stiles.)

seemed to penetrate about half way through the "Olympic"?

A. Further than half way, because the pole rack runs athwartships here, and I was over here at the gangway and I saw the bow, so it had about passed the amidship.

Q. That was the top of the bow that you saw?

A. That is right.

Q. Where was the top of the bow with reference to the starboard side of the "Olympic"?

A. Well, here is your starboard side over here and your bow, of course, was headed towards the starboard side. [423]

Q. Well, that is right. But did the top of the bow——

A. The rake.

Q. Of your rake?

A. Well, that was well past the amidship.

Q. It was well past the amidship?

A. Oh, yes.

Q. Did it extend as far as the starboard side of the "Olympic"?

A. No. No.

Q. Can you tell us how far it did extend beyond a line drawn parallel and above the keel?

A. Well, now, that is getting down to guessing again.

The Court: We don't want any guessing.

Q. By Mr. Adams: Well, we don't want you to guess. But can you estimate how far the top of the prow was from the starboard side of the "Olympic"?

(Testimony of Stanford Roberts Stiles.)

The Court: If you know.

A. No, I couldn't say.

Q. By Mr. Adams: Your observations, as to how far the "Sakito" penetrated the "Olympic", were you made while you were aboard the "Lillian L", is that correct? A. Yes, at the gangway.

Q. Had you yet boarded the "Lillian L", or were you at the gangway going down?

A. No, I was on the "Lillian L".

Q. Standing on what portion of the "Lillian L"? [424] A. In the wheelhouse.

Q. How high is that above the surface of the water? A. The deck and the wheelhouse?

Q. Yes.

A. Probably in the neighborhood of 3 feet.

Q. How tall are you? A. 5, 9.

Q. You have testified you did not know the normal freeboard of the "Olympic" at that time?

A. No.

The Court: That has been asked and answered, counsel.

Q. By Mr. Adams: When you first saw the "Sakito Maru" did you judge her heading to be of such a nature that she was bound to collide with the "Olympic"?

A. Yes, at the speed she was going.

Q. It was your judgment, was it, that with the "Sakito" heading as she appeared to be at that time she would strike the "Olympic" about midships? A. Or just possibly a little forward.

(Testimony of Stanford Roberts Stiles.)

Q. Did you estimate, when you saw her, that she would strike the "Olympic" at about the point where she actually did? A. Approximately.

Mr. Adams: No further questions.

Mr. Cluff: Just one question I overlooked on re-direct: As you stood there at the gangway, and looked at the "Sakito", [425] did you see any look-out on the forecastle head?

A. Never at any time did I see anyone, until after the collision.

Q. You didn't see any man until after the collision? A. No.

Q. From where you were standing, if a man had been standing in the bow, with his trunk and head above the bulwark—I will withdraw that. Did you see any man with his trunk and head in the extreme bow above the bulwark, from his waist?

A. No, I did not.

Mr. Adams: I object to that as already having been asked and answered.

Mr. Cluff: All right. That is all.

Cross Examination

Q. By Mr. Black: When you stated that you arrived alongside at 7:05, or about 7:05, was that based on an actual check of your watch?

A. Yes, sir, on the ship's clock.

Q. Did you happen to notice the time again by that clock, at any time?

A. When I went aboard, after the collision.

(Testimony of Stanford Roberts Stiles.)

Q. That was after the collision?

A. Yes.

Mr. Black: That is all. [426]

Cross Examination

Q. By Mr. Adams: I would like to ask one question in connection with that subject. When was that clock last checked?

A. We checked it whenever anyone came aboard with a good watch; what we figured was a good watch.

Q. Did you check it that morning? Did anyone have a good watch on board?

A. We never checked it that morning.

Q. You don't recall having checked it that morning?

A. We did not check it that morning.

Q. Did you check it the previous morning?

A. We did not check it at any certain intervals although we wound it every Sunday, and whenever anyone came aboard and claimed that he had the right time, of course, there was always a dispute there, and if they could convince us they were closer to right than we were, we would take their word for it, and set the clock.

Mr. Adams: No further questions.

Mr. Cluff: So far as the Hermosa Amusement Corporation is concerned, that is our case in chief.

The Court: I thought you were going to present some evidence here about the markings on the "Sakito Maru"?

Mr. Cluff: I will do that. I figured it was rebuttal, and when they made a showing we would. However, I will be glad to do that now. [427]

The Court: That is coming in anyhow?

Mr. Cluff: It is coming in, yes.

Mr. Montgomery: May we have just a short recess with other counsel, to see if they are all satisfied to rest now? Personally, I am.

The Court: I just want to know if anyone has anything further to say, or offer? If he does, let us hear from him.

Mr. Adams: I take it then not only the Hermosa, but all the other libelants rest.

The Court: Yes.

Mr. Adams: If the Hermosa's case in chief, or the libelants' case in chief, is closed, it seems to me that we should be permitted to finish with our cross examination of Captain Anderson.

The Court: I think the cross examination of Captain Anderson is your case. It was not proper cross examination, the matters you were going into.

Mr. Adams: I hadn't completed all of my cross with Captain Anderson. I don't think it makes a great deal of difference. I would suggest that we be permitted to call him now.

The Court: There is no objection. He is here.

Mr. Adams: I was going to suggest that those portions of the interrogation that are proper cross be considered, as part of the case.

The Court: You may proceed. [428]

JOAKIM M. ANDERSON,

recalled as a witness on behalf of the libelant, testified further as follows:

Cross-Examination

Q. By Mr. Adams: Now, Captain, what was the draft of the "Olympic" on the day of the collision, prior to the collision? A. 16.6 aft.

Q. And forward?

A. About 15, approximately, as far as I remember now.

Q. I believe you testified that the "Olympic" was built in 1877, but I don't know whether you testified she was built in Belfast, Ireland.

The Court: That has been testified to, counsel. [429]

Q. By Mr. Adams: Now, Captain Anderson, you testified that you have never had a certificate for the "Olympic" since, I believe, 1938?

Mr. Cluff: Just a minute. I object to that upon the ground that it is not cross examination. I propose to go fully into the inspection situation in rebuttal if it is made an issue in this case.

The Court: Let me tell you this: I am not going to draw any close line between what is proper rebuttal, and what is not. I am going to give each side an opportunity to get in all the evidence that they have. I am going to be liberal in that respect; I am not going to hold anybody down. Even after Mr. Adams is through, if they have additional evidence, I am going to exercise my discretion, and let all the evidence go in. It isn't going to make a great deal

(Testimony of Joakim M. Anderson.)

of difference, whether they call it rebuttal or not. I have tried to cut down all the evidence that is cumulative.

Mr. Cluff: If I can go into it at any time, then, I will withdraw my objection.

The Witness: May I then explain, your Honor, from the beginning of this inspection business?

The Court: Answer the questions, Captain.

A. Yes, sir.

Q. By Mr. Adams: The last certificate you had was in 1938? [430] A. Yes.

Q. That was picked up by the Bureau of Marine Inspection and Navigation?

A. They demanded us to put on a load line.

Q. You did not comply with their demands and they took up your certificate, did they not?

A. That's right.

Q. The last certificate you had required you to have two certificated lifeboat men?

The Court: As I understand, when they required you to comply with the load requirement, they took up your certificate at that time?

A. Yes, and no more was said until 1939, when I was called up to the inspector's office to give a blueprint of the ship, as there were more rules and regulations going into effect by Captain Sullivan——

Mr. Adams: I don't care to have you give a complete narration of this, other than to answer my question, unless the court cares to have you. I wish you would confine your answers to my question.

(Testimony of Joakim M. Anderson.)

Mr. Cluff: I suggest, Captain Anderson, that you just answer the questions, and let me try our case.

A. It is well.

Q. By Mr. Adams: The certificate you last had, which was picked up in 1938, required you to have two certificated lifeboat men? [431] A. Yes.

Mr. Montgomery: I object to that as immaterial.

The Court: Overruled.

Q. By Mr. Adams: After the Bureau of Marine Inspection and Navigation served upon you this mimeographed list, which has been offered in evidence, as "Sakito" B, the *Hermosa* took an appeal from that order to the Director of the Department of Commerce; that is, the Director of the Bureau of Marine Inspection and Navigation, in the Department of Commerce.

The Court: The record is the best evidence in that case, is it not?

Mr. Adams: Yes. This is a preliminary question.

The Court: I don't know whether it is preliminary or not, when you ask him if he took an appeal. Let us have the record.

Mr. Adams: I have the final decision.

The Court: You said he appealed. It must have been in writing.

Mr. Adams: It is in writing in the form of a letter. I have asked the *Hermosa* people to produce all the correspondence.

Mr. Cluff: Tell me what you want and I will give it to you.

(Testimony of Joakim M. Anderson.)

Mr. Adams: I was going to introduce, if the court please, the final letter on this, as I understand it to be, from R. S. Field, to the Director of the Bureau, dated July [432] 24, 1940. If there are any intervening papers that anyone thinks are material, I have no objection to introducing those. That's what I wish to offer.

Mr. Cluff: Just ask for what you want, and I will give it to you.

Mr. Adams: I want the letter to Mr. Lansburgh addressed to him by Mr. R. S. Field, under date of July 24, 1940.

Mr. Cluff: I have that here. Anything else?

Mr. Adams: That is all I want right now.

Mr. Montgomery: May our objection run to this whole line of testimony?

The Court: Yes.

Mr. Fall: Not as far as the interveners International Broadcasting Company and John Gilbert Montgomery, are concerned.

Mr. Black: Let the record show that the libelants McGrath do not object.

Mr. Stearns: Nor do the libelants Mayo object.

Q. By Mr. Adams: Captain Anderson, I show you this letter that we have been talking about, and ask you if that is not the letter that Mr. Lansburgh, of the Hermosa Amusement Company, received from Mr. Field.

Mr. Cluff: We admit that it is. You don't need to identify it.

(Testimony of Joakim M. Anderson.)

Mr. Adams: All right. I will offer it in evidence, if [433] the court please.

The Clerk: "Sakito" Exhibit E.

SAKITO EXHIBIT No. E

DEPARTMENT OF COMMERCE

Bureau of

Marine Inspection and Navigation

Washington

July 24, 1940

In reply refer to
3-16888

Mr. S. Laz Lansburgh,
105 Montgomery Street,
San Francisco, California.

My dear Mr. Lansburgh:

Reference is made to your letter dated July 9, 1940, together with enclosure marked "Exhibit A", appealing from the actions of the Board of Local Inspectors at San Pedro and the Supervising Inspector at San Francisco, California, with respect to the application of the requirements itemized in "Exhibit A" to the non-self-propelled pleasure vessel OLYMPIC II of 1766 gross tons anchored at sea three and one-half miles off the breakwater at San Pedro, California.

46 U. S. C. 395 to 400 provides in effect that all seagoing non-self-propelled vessels of 100 gross tons

(Testimony of Joakim M. Anderson.)

or over shall be in suitable condition so as to warrant the belief that such vessels may be employed in the services in which they are engaged with safety. The statutes further provide that until this standard is fully complied with the Local Inspectors are not authorized to issue a certificate of inspection to any such vessels.

I have reviewed the requirements itemized in "Exhibit A" in relation to their applicability to the OLYMPIC II, permanently anchored as a non-self-propelled pleasure vessel on the high seas, and am of the opinion that such requirements are reasonable and generally necessary to adequately ensure the safety and protection of the patronizing public.

Since no specific requirement itemized in "Exhibit A" is appealed, and as I am of the opinion that the requirements of the Local Inspectors are reasonable in view of the services in which the OLYMPIC II is engaged, I am unable to find any reversible error in the actions of the Local Inspectors or the Supervising Inspector which actions are hereby sustained.

Sincerely yours,

R. S. FIELD,

Director.

[Endorsed]: Filed Sep. 18, 1941.

The Court: Instead of taking up a lot of time on this phase of it, it seems to me you gentlemen should be able to stipulate that certain requirements

(Testimony of Joakim M. Anderson.)

were made, that were not complied with; it is simply a question of whether they had to, or whether they contributed to the accident. If the boat was absolutely unseaworthy, it would not justify running it down, if that is what happened.

Mr. Adams: The court will appreciate that it will have a material bearing upon several issues in this case. First, it would have a bearing upon whether the barge would have sunk.

The Court: I don't know, when you cut a boat half in two, that you can blame the boat for sinking.

Mr. Adams: It depends upon what type of boat. Many boats are cut in two, and that is why in fact naval architects spend as much time as they do designing collision tight and watertight bulkheads. That is why.

The Court: I don't care about arguing it now. Proceed. I am just making comments; if you cut a boat half in two, some of these trivial requirements, bulkheads, and things of that sort, that is something you can argue about,—whether they had enough berths for people to sleep in, under the load line Act, or whether that had anything to do with death, I can't see. [434]

Mr. Adams: No one has ever pleaded that, and I have never made any statement to that effect, but I am perfectly willing to stipulate that many of these requirements were not complied with.

Mr. Cluff: That isn't a fact. If you will pick out the different things and ask Captain Anderson whether they had them—

(Testimony of Joakim M. Anderson.)

The Court: Let us not have any argument. Proceed.

Q. By Mr. Adams: Captain Anderson, I refer you to "Sakito" B, and particularly to the mimeographed list of specifications, as a part of that exhibit; under the title "Hull" there is item 1: "The vessel shall be dry-docked for inspection." Was that done following the receipt of the specifications?

The Court: That was asked and answered, counsel.

The Witness: Yes, that was answered.

The Court: Just a moment now. That was asked and answered.

Q. By Mr. Adams: With respect to item 2, were the various structures there inspected and tested, to determine the actual conditions, and were any repairs or renewals or replacements made to any of those structures?

A. That was also answered, Mr. Adams.

Mr. Adams: If the court please——

The Court: You can answer that question.

A. No, sir. [435]

Q. By Mr. Adams: With respect to item No. 4, Captain, were any watertight bulkheads fitted into the "Olympic," after you received these specifications? A. No, sir.

Q. There was no change made with respect to the bulkheads, was there? A. No, sir.

Q. Was any change made with respect to the structural strength of the "Olympic"?

(Testimony of Joakim M. Anderson.)

A. No, sir.

Mr. Cluff: I submit that is not a question.

Mr. Adams: I am sorry——

Mr. Cluff: I don't know how you can——

The Court: Just a minute, gentlemen. Discontinue the argument. Go ahead; proceed. If you have any objection, make it.

Q. By Mr. Adams: With respect to item No. 9, were any changes made with reference to that item?

The Court: What is the item?

Q. By Mr. Adams: "Platforms, stagings and gallery runways rigged outside of the hull shall be of suitable construction and not less than three square feet of deck space shall be allowed for each person; and where enclosed, shall be provided with at least two means of escape."

Mr. Cluff: I think it should be first shown that the vessel did not comply with that. [436]

The Court: Did you comply with that?

A. No, sir.

Q. By Mr. Adams: With respect to item No. 11, which reads: "An inclining test shall be made by a representative of the Bureau." Was any inclining test ever made, after receiving these specifications? A. No, sir.

Q. Under the title "Hull Equipment" item 20 d. reads: "An efficient fog bell." Was any different fog bell placed upon the "Olympic" than previously aboard that vessel?

Mr. Cluff: To which we object upon the ground

(Testimony of Joakim M. Anderson.)

that no showing has been made that the fog bell on her was not efficient.

The Court: Objection overruled.

A. There was only one fog bell on board the ship.

The Court: The same bell all the time?

A. Yes.

Q. By Mr. Adams: With respect to item 20 g. "One mechanical fog horn."

A. Yes, sir, we had that.

Q. With respect to item 20 h. "Basket or other efficient signal for the purpose of indicating the side of the fishing vessel approaching vessels may pass."

A. Yes, sir, we had a black ball up, two feet in diameter. [437]

Q. Item 22 d. "One efficient steering compass." Did you have a compass aboard the "Olympic"?

A. Yes, sir, we had two.

Q. Where were they located?

A. We had one at the forepart of the wheel aft, and another standard compass.

Q. Were they both in operation?

A. Yes, they were in good condition.

Q. Item 24, "There shall be at least ten square feet of deck space available for each person allowed on board."

A. Yes, sir, that was complied with.

Q. You made some change, did you, with respect to the "Olympic", after you received the specification, in that regard? A. No. [438]

The Court: I understand these are specifications put out for all fishing barges, are they not?

(Testimony of Joakim M. Anderson.)

Mr. Adams: That is correct.

Mr. Cluff: All pleasure barges, of any kind, fishing barges, and so forth.

The Court: There is no claim that this boat was overcrowded on that particular morning?

Mr. Adams: No, that is very true.

Q. Item 26, "A log book shall be kept in which a daily record of the number of persons on board during the day shall be entered." Did you maintain a log book? A. Yes.

Q. That sank with the barge, did it?

A. Yes.

Q. Item 30, "Spaces containing operating boilers or machinery located below the main deck shall be provided with suitable bulkheads, and if wood, shall be sheathed with insulating material covered with not less than 18 gauge galvanized iron." Did you have machinery located below the main deck?

A. Yes, sir, and that was protected by an iron bulkhead that used to be in the ship before.

Q. Item 32, "All bilges, holds, compartments, etc., shall be free of all rubbish, waste, oil, etc."

A. Yes, sir.

Q. You testified to what you did have in the hold. Did [439] you have anything else in the hold?

A. It was all clean sand.

Q. There are a series of specifications relating to fire alarm system, and one of those is "A general alarm system operated manually from a central station." Of course, you had no such system, did you?

A. No.

(Testimony of Joakim M. Anderson.)

Q. Item No. 34, "Approved lifeboats with suitable launching arrangements and approved life rafts or buoyant apparatus, shall be carried sufficient to provide accommodations for all persons on board. Fifty per cent of such accommodations may be lifeboats, and fifty per cent may be in life rafts or buoyant apparatus."

A. We had a 22-foot lifeboat on board; also a skiff; had 300 life preservers; four ring buoys; four fire axes.

The Court: We did not have a fire here.

A. This is just the lifeboat.

Q. By Mr. Adams: Your lifeboat had a capacity of 20 people?

A. Yes.

Q. Your skiff would hold how many?

A. About four.

Q. The only other life saving equipment you had aboard were life preservers?

A. Life preservers.

Q. You had no life rafts or buoyant apparatus?

[440]

A. No, sir.

Mr. Chuff: May I interrupt to ask a question: You had rings? A. Yes.

Q. Ring buoys? A. Yes.

Q. How many?

A. Four; two with lights.

Q. In various parts of the ship?

A. Yes, two in the after quarter, and two in midships forward.

(Testimony of Joakim M. Anderson.)

Q. By Mr. Adams: Under the title "Manning", item 37: "A sufficient complement of licensed officers and certificated seamen, including lifeboat men, shall be carried as may be required to adequately deal with any emergency that may arise, and a licensed deck officer shall be in command of the vessel." Of course, you did not comply with that, did you? A. No, sir.

Q. 38: "Minimum crew while vessel is at anchor with persons other than crew on board: 1 licensed master, 1 licensed engineer. Sufficient certificated lifeboats to adequately launch and man all life-saving equipment, 65% of which shall be able seamen." Of course, you did not comply with that, did you?

A. No. That is the question, that it could not be done [441] in this business.

Q. There are some general specifications, which are incorporated in item 40, 41 and 42. There were no changes made with reference to those general regulations, were there—changes in the "Olympic", after you received these specifications?

A. No, sir.

Q. Now, Captain Anderson, after the collision, and after the barge sank, you arranged for a diver to go down and examine the wreck, did you not?

A. Yes, sir.

Q. Were you present at the time he made his dive?

A. No, we had to go back in; we went out there

(Testimony of Joakim M. Anderson.)

that morning, but we did not stay until he went down and came up again.

Q. On how many occasions did he go down, do you recall?

A. I think only once. He may have gone down twice, but I wouldn't say for sure.

Q. It is my recollection that he went down one day, and then went down another. Is that right?

A. He might have done that. I was out there the morning he went down to look for bodies.

Q. You received a report from him, did you not, Captain?

A. No, I did not receive a report.

Q. The Hermosa ordered the diver to go down, did it not? A. Yes, sir. [442]

Q. And you are president of the Hermosa?

A. Yes.

Q. You did that?

A. Yes, I told him.

Q. Didn't the diver make a written report, concerning his findings? A. No, sir.

Q. You are sure of that?

A. Not to me; I didn't receive any letter.

Mr. Adams: Mr. Cluff, may I ask if you have any diver's report?

Mr. Cluff: I have never seen one, Mr. Adams.

Mr. Adams: The reason I stated that, if the court please, was that during the A Board hearing Mr. Nix, who represented the Hermosa at the time, stated that a diving report would be furnished to

(Testimony of Joakim M. Anderson.)

the A Board, and I would be furnished with a copy. I have never received it.

Mr. Cluff: You will have to pick on Mr. Nix. I never saw it.

The Court: Where is your diver?

Mr. Adams: I don't know. What diver did you employ, Captain?

A. What is his name again now?

Q. By Mr. Adams: Was he with Hull, Smale & Robinson?

A. That is right, Hull, Smale & Robinson. Robinson is the fellow that limps a little. [443]

Q. He was their regular diver?

A. I don't know. He did the diving.

Q. He was the diver that Hull, Smale & Robinson regularly employed? A. Yes.

Mr. Adams: To short-cut it, I was going to ask the Captain what report the diver made, either in writing or verbally.

Mr. Cluff: Go ahead.

The Court: Where is that admissible under the hearsay rule?

Mr. Adams: It might be subject to that.

The Court: I think you had better get your evidence in the right shape. There has been a lot of criticism as to hearsay evidence around here, and then you turn around and want to do the same thing, and I am going to stop you.

Mr. Adams: I was not going to do it unless the others joined with me in my efforts.

(Testimony of Joakim M. Anderson.)

Q. Now, Captain,—I don't know how far we got into this subject the other day; I might have to repeat one or two questions—were you aboard the "Olympic" when a coast guard officer boarded her, some time in May or June? A. Yes, I was.

Q. Do you remember that officer's name?

A. Yes, I do.

Q. That was Mr. Moynahan, was it? [444]

A. No.

Q. Was it Lieutenant Shoemaker?

A. No, it was the Calhoun—

Mr. Cluff: May I suggest the name to you?

Mr. Adams: Yes.

Mr. Cluff: Reeder.

A. Yes, John Reeder.

Q. By Mr. Adams: What coast guard vessel was he from?

A. The "Calhoun."

Q. Were you there when someone from the "Hermes" boarded her?

A. No. I was on board twice, I think, when Mr.—what is his name again—Reeder; that is right.

Q. You heard about an officer from the "Hermes" boarding the "Olympic", did you not?

A. No, sir.

Mr. Montgomery: I object to that as hearsay.

The Court: It has been answered.

Q. By Mr. Adams: There was no report to you from the "Hermes"?

A. No, sir, none whatsoever.

(Testimony of Joakim M. Anderson.)

Q. When you were not aboard the "Olympic", who was in charge of the "Olympic", during May and June?

A. A master by the name Pecar was aboard at that time.

Q. How do you spell his name?

A. P-e-c-a-r, Pecar. [445]

Q. How long did he remain in the employ of the Hermosa?

A. He was about three months out there.

Q. He was not there at the time of the collision?

A. No, sir, he left before the collision.

Q. He was in full charge when he was there, when you were away from the barge?

A. Yes, sir.

Q. It is a fact, is it not, Captain, that you were notified by the coast guard to remove yourself from that anchorage ground?

A. No, sir.

Q. It is a fact, is it not, that the Hermosa Amusement Company, or some representative of that company, was notified to remove the "Olympic" from that anchorage?

A. No, sir.

Mr. Cluff: Do you expect to prove that, Mr. Adams?

Mr. Adams: I have already proven it.

The Court: Where?

Mr. Adams: In the deposition.

The Court: Of whom?

Mr. Adams: Moynahan, for one, if the court please.

(Testimony of Joakim M. Anderson.)

The Court: You will have to get more proof than that, so far as this court is concerned.

Q. By Mr. Adams: Have you ever had any discussions with the coast guard officers about the "Olympic" being [446] anchored there, prior to the collision? Yes, I did.

Q. With whom?

A. With Reeder. He was the only one that I met when I was out there. In fact, Lansburgh looked over the ship, to see how things were running, and Reeder came aboard again.

The Court: Mr. Adams, Mr. Moynahan didn't testify he was told to remove these boats. His testimony was that he talked to somebody on board the boats, and told them they were dangerously close to the lane of travel.

Mr. Adams: I don't recall exactly what he testified along that line.

The Court: I read his testimony this morning. As I recall, he did not make any statement that he ordered anyone to move any of the boats away.

Mr. Adams: The court might be right. I haven't read this for several days, and I just read it very hurriedly once.

Q. Let me ask you this, Captain Anderson: Was it ever brought to your attention, as president of the *Hermosa*, or as Captain of the barge, that any coast guard officer ever informed the *Hermosa*, through one of its agents, that the "Olympic" was anchored in a dangerous place while she was anchored there at Horseshoe Kelp?

(Testimony of Joakim M. Anderson.)

A. None whatsoever.

Q. None whatsoever? [447]

A. No, sir.

Q. Were you in the city during the latter part of May; that is, in this vicinity?

A. I can't recollect that. What day?

Q. Let us say since May 10th, until the end of that month.

A. I couldn't answer that.

Q. You might have been out of the city?

A. I might have been.

The Court: Here is the testimony. It says "We made our boarding in the routine manner, inspecting all the equipment, and so forth. In the course of our conversation with the person in charge we informed him that we thought they were anchored in a very dangerous place." That is his testimony.

Q. By Mr. Adams: Do you recall, Captain, when someone boarded the "Olympic" and made an inspection of the equipment aboard the "Olympic", some time in the latter part of May, or the first part of June, one of the coast guard boats?

A. No, I was only there when Reeder was there. He was the one who inspected all the equipment, and I think he went over everything that was there, and found it satisfactory.

Mr. Adams: I move that the latter portion be stricken, if the court please, as non-responsive, and hearsay.

The Court: It is stricken.

Q. By Mr. Adams: You have no recollection of

(Testimony of Joakim M. Anderson.)

any [448] officer making even a routine inspection in the latter part of May, or the first part of June?

A. No, sir.

Q. Captain, during the latter part of May and the first part of June, was Mr. Greenwood employed aboard the barge?

A. He was, but Pecar was in charge then.

Q. Was Mr. Culp employed aboard the barge at that time?

A. I don't remember, although he might have been; but I doubt it. I think he came later on.

Q. Was Mr. Karsh operating a concession aboard the barge at that time? A. Yes, sir.

Q. Have you ever seen Mr. Greenwood down below the main deck, in the hold of the "Olympic"? I take it he had occasion to go down there sometimes in the pursuit of his duties?

A. Yes, he did go down once in awhile, to oil up the engine.

Q. You have seen him down there, have you?

A. Yes.

Q. The entire open hold would be visible to him, would it not?

A. No, you can't see from one end of the ship to the other in tween decks. There is a bulkhead, you know.

Q. Did you ever have occasion to go down to the lower hold, where you could see the entire lower hold? [449]

A. We never go down to the lower hold. I am talking about the tween decks.

(Testimony of Joakim M. Anderson.)

Q. From between decks can you see into the lower hold?

A. No, only by removing planks.

Q. Did you ever adjust your ballast, after you anchored out there?

A. She was well stowed when she was put in.

Q. Is your answer that you never did adjust your ballast?

A. That is right.

Q. Do you have any recollection of Mr. Greenwood ever going down into the hold of the "Olympic"?

A. No.

Q. What about Mr. Culp, do you have any recollection of his going down there?

A. No; he has no business down there.

Mr. Adams: Nothing further at this time, if the court please.

(Short recess.) [450]

Mr. Adams: If the court please, I have a witness who is employed, and if there is no objection if we put him on now we could finish with him before noon and he could return to his work, if I might put him on out of order.

The Court: All right.

Mr. Cluff: No objection.

The Court: No objection. You may step down, Captain.

Mr. Adams: Mr. Liddell, please. [451]

FRANK LIDDELL,

called as a witness on behalf of respondents, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Frank Liddell.

Direct Examination

Q. By Mr. Adams: Mr. Liddell, what is your occupation? A. Boatman.

Q. You now operate a water taxi, do you not?

A. That is right; yes, sir.

Q. Have you had much experience around boats?

A. Well, all kinds for several years.

Q. In this harbor here?

A. Yes, sir; and Puget Sound.

Q. You recall the collision between the "Olympic" and the "Sakito Maru", do you not?

A. Yes, sir.

The Court: Speak up so they can follow you.

Mr. Adams: Speak up a little louder, please, Mr. Liddell.

Q. On that day you were employed as a deck hand on the tug "Ray R. Clark", were you not?

A. That is right.

Q. And that tug went out to the "Point Loma" that morning for the purpose of towing the "Point Loma" in, did she not? [452]

A. That is right.

Q. You were aboard at that time?

A. Yes, sir.

Q. Will you describe the condition of the weather

(Testimony of Frank Liddell.)

as you proceeded on the "Clark" toward the "Point Loma", and tell us, first, about what time that was?

A. Well, it was right after daylight in the morning we went out for the "Point Loma". We had no compass that was any good, so we just had to guess our way out there. We had an old Navy type compass. So we was running out and we missed it. So Ernie Judd and this deck hand could tell by the sound of the "Point Loma's" bell which was the "Point Loma". That is the way we found it.

Q. I see.

A. We couldn't rely on our compass at all. Anyway, there was a heavy ground swell and it was foggy.

Q. What time did you go out?

A. Well, it was right after daylight. I don't remember the exact time. I think we started some time along 5:30 in the morning or 6. I don't remember the exact time.

Q. Do you have any recollection about what time it was when you arrived?

A. It was somewhere around 7 o'clock.

Q. Somewhere around 7 o'clock. When you did arrive at the "Point Loma" did you remain aboard the tug?

A. I did. I put Mr. Judd and Bill Collins off, and [453] his men off, on the "Point Loma", and I didn't lay alongside because there was such a ground swell running the tug was just beating itself to pieces against the gangway there.

Q. So where did you lie?

(Testimony of Frank Liddell.)

A. I went around and lay off his port bow.

Q. Off the port bow. About how far were you off the port bow?

A. Possibly 75 or a hundred feet.

Q. You were not anchored, were you?

A. No, sir; I was just laying there adrift.

Q. In what direction was the swell running that you spoke of?

A. It was a southwest swell, a heavy swell.

Q. Coming from the southwest?

A. The swell was coming from the southwest; that is right.

Q. I would like to show you a digram that has been drawn, which is "Olympic" 7—no; I am sorry. This is not it.

The Clerk: Is this the one you mean?

Mr. Adams: "Olympic" 4.

The Court: 4.

Q. By Mr. Adams: You will see three objects marked on this diagram which are supposed to represent the relative positions of the "Rainbow" barge, the "Olympic" and the "Point Loma". Do those positions accord with your own [454] recollection of how the barges lay that morning?

A. That was right, but it seems to me you got the "Olympic" too far ahead there. She should be about a half a ship's length back to be in the course that she was laying on as that steamer came to her.

Q. When you say "back" you mean about——

A. Should be astern more.

(Testimony of Frank Liddell.)

Q. Should be astern about a half length?

A. The diagram, according to my compass—I say that the compass I had on there wasn't reliable, nevertheless, you could take a bearing on it. The "Olympic" is too far ahead there.

Q. Too far to the right or too far to the left?

A. Too far ahead.

Mr. Cluff: To the west he means to say.

A. Too far to the southwest.

Q. By Mr. Adams: How far back do you think she should be?

A. If you put the bow of the "Olympic" where that "Y" is that would be more on the course where she was laying.

Q. I see. That should be moved back there, in your opinion?

The Court: About half way?

A. About half way back is correct.

Q. By Mr. Adams: There is an object on this diagram which is supposed to represent the "Ray R. Clark". Does that [455] represent the position of your tug as you lay off the "Point Loma's" bow?

A. That would represent it right there and the "H-10" water taxi laid outside me there yet.

Q. In other words, it is your opinion that the object marked for the "H-10" is the position of your tug?

A. That is right.

Q. And that the "H-10" lay between you and the "Olympic"?

A. That is right.

Mr. Adams: I see. I don't think it is necessary, perhaps, to destroy all the drawings on this diagram.

(Testimony of Frank Liddell.)

The Court: No.

Mr. Adams: But I would like to draw a line from the object previously indicated to mark the "H-10" and say "Ray R. Clark by" this witness's name; and I will so do if there is no objection.

The Court: He corroborates the testimony that was given as to the location of those two boats.

Mr. Adams: No, if the court pleases. He says that the tug "Ray R. Clark" should be shown to be in the position the little "H-10" is shown.

The Court: Oh, I misunderstood his testimony.

Mr. Cluff: He testified that the "H-10" was still outside the——

Mr. Adams: That is right.

Mr. Cluff: He simply wants to move a little broader on [456] the port bow.

Mr. Adams: He wants to move these vessels there so the tug is in the same position as the "H-10" is shown on this diagram.

The Court: All right.

Q. By Mr. Adams: That is correct, Mr. Liddell?

A. That is right.

Q. By Mr. Cluff: But the "H-10" was still outside of you? A. He was outside of me.

Q. By Mr. Adams: Now, I have marked the previous position for the "H-10" as " "Ray R. Clark" position according to Liddell." Mr. Liddell, while you laid there aboard the "Clark" did you hear any whistles from a steamer or motor vessel?

A. Yes; they were both, using the proper fog signals.

(Testimony of Frank Liddell.)

Q. Don't tell us what you think was proper. Just describe what you heard, and then the court will have to determine whether they are proper or not; so just tell us what you heard.

A. Well, the fog signal is merely a prolonged blast on your siren or whatever you have.

Q. And you heard such a whistle, did you?

A. I had for several minutes before she ever hove into sight there.

Q. What did you do when you heard the first whistle? [457]

A. I happened to be laying there. I just kept listening for it after I knew there was a steamer coming.

Q. Did you take any bearing on that whistle?

A. Well, after several, and I just did, because if his bearing didn't change I knew that I was laying right in his path, and the "Olympic" was too, and naturally I began to watch and I knew something was going to happen, couldn't help it. [458]

Q. You did take a bearing on the direction that the whistle appeared to be coming from, in your best judgment, did you not?

A. That is right. Any time you are laying in fog and hear a whistle and you don't know where he is at, you take a bearing to see whether the whistle changes or not, whether the bow turns or not or whether it keeps on coming in the same bearing.

Q. Despite the fact the compass was faulty for navigating purposes, it would still serve the same purpose for taking a bearing, would it?

(Testimony of Frank Liddell.)

A. Absolutely.

Q. How many whistles did you hear from this same direction?

A. I heard 12 or 15 at least.

Q. Did you continue to note the bearing of those whistles as you continued to hear them?

A. Yes; because I was laying right where I was and I knew that I was laying right in his course. Naturally, it would be up to me to look out for him. I knew he was coming my way.

Q. By the Court: You heard from 12 to 15 of these signals? A. Yes, sir.

Q. And they were, in your estimate, approximately a minute apart? [459]

A. A minute apart; yes, sir.

Q. By Mr. Adams: Did the bearings of those whistles change in any respect?

A. They never changed. [That is why I watched out for myself.

Q. Where did the sound of those whistles appear to come from with reference to the "Olympic" and where you lay? Can you indicate on this chart?

A. Well, they came right from the southeast, right that way.

Q. Right from the southeast?

A. Distinctly, the first whistle I heard, until the collision, they came from the same way and there was no change in the compass bearing at all.

Q. You took that bearing by the means of your compass, I understand?

(Testimony of Frank Liddell.)

A. That is right. I could look right at it there.

Q. Was the "Olympic" barge within the line of the bearing?

A. Well, he was right in the steamer lane.

Q. Was the "Olympic" barge right in the line of your bearing with this sound?

A. That is right.

Q. Did you continue to watch in that direction then? A. Yes, sir.

Q. What did you see? [460]

A. Well, I could tell the steamer was going to hit the "Olympic" because of the bell—whoever was ringing the bell started to hollering at the people on the steamer, you see, and I called Leonard Smith's attention to it. I said, "Look, Smithy!" About the time he looked around, why, he hit her.

Q. What did you see, Mr. Liddell, when you first saw the "Sakito Maru"?

A. I seen her bow coming up and I seen her come right in and knock her mast down and knocked her broadside. I went around to the "Point Loma" and picked up Mr. Collins and Mr. Judd, and by the time I got around to looking again I saw the "Olympic" mast sticking up, the stump, that is about all I saw.

Q. From the time you first saw the "Sakito" until she struck the barge did she appear to change her course in any respect?

A. No. It was not over 25 feet from her when I first saw it.

(Testimony of Frank Liddell.)

Q. She was very close to the barge when you first saw her? A. That is right.

Q. About 25 feet distant?

A. Well, I had time to tell Smithy in the "H-10" to look; and when he turned his head, why, she hit. That is the first I saw it. I knew where it was going to hit [461] because I heard the people yelling at the people on the steamer.

Q. But you were watching that direction, expecting to see a vessel come through the fog from that direction, is that right?

A. That is right. I knew they was coming and I could hear the whistle of it.

Q. Were you watching in that direction when you first saw the "Sakito"? In other words, were your eyes focused in that direction when she came into view?

A. That is right, because something seemed to tell me there was going to be a collision. I don't know how it is, and something told me to watch, so I did.

Q. You made some mention of the fact that the barge was on the steamer lane. Vessels pass those barges frequently, do they?

A. That is right. That has not been the first collision they had out there.

Q. Of a barge?

A. A steamer hit a fishing boat and knocked half the passengers in over there. Horseshoe Kelp runs there for a mile and a half and they all get

(Testimony of Frank Liddell.)

out there and anchor there, and it is right directly in the steamer lane. So that is not the first time that happened out there. [There has never been a disaster of that magnitude before, but it is not the first time it happened. [462]

Mr. Adams: No further questions.

Cross-Examination

Q. By Mr. Cluff: What other collision do you know of that took place out there?

A. Well, the "Wolfman" got hit out there one time that I knew of and a steamer knocked half of the people overboard. I don't remember the name of the steamer but I remember the "Wolfman" was the one that got hit. For any more data on it you can go to Joe Hornshell that owned the "Wolfman" at that time and he will tell you about it.

Mr. Cluff: May I have the answer?

(Answer read by the reporter.)

Q. You have been around the waterfront here a good many years, Mr. Liddell?

A. Oh, a few years; yes.

Q. And, I believe, are quite familiar with the Horseshoe Kelp?

A. That is right.

Q. For quite awhile?

A. That is right.

Q. There have been fishing barges out there for years, haven't there?

A. Yes, sir.

Q. All sorts of small craft?

A. All types. [463]

Q. All types, every day during the season?

A. That is right.

(Testimony of Frank Liddell.)

Q. Commercial fishermen?

A. No; never a commercial fisherman.

Q. You never did see commercial fishermen out there?

A. No; I never did do it. I seen commercial fishermen out there. If you mean if I fished commercially, no.

Q. I didn't ask you if you fished commercially, but if commercial fishermen didn't fish out there on Horseshoe Kelp?

A. Yes; lots of them.

Mr. Adams: If the court please, may my same objection run to this line of questioning as I have previously voiced to the other witnesses?

Mr. Cluff: It is cross-examination now.

Mr. Adams: Well, it still doesn't make it competent, relevant or material, if the court please.

The Court: It is the same question and I am willing to have your objection. As a matter of fact, it is purely cumulative.

Q. By Mr. Cluff: Live bait boats and everything else have been out there for years, is that right?

A. That is right.

Q. Now, you didn't see the "Sakito", that is, you did not actually see the ship until she was about 25 feet away from the side of the "Olympic", just a moment or two before the crash? [464]

A. Before it hit; that is right.

Q. And you heard a whistle off to the southward?

A. Southeast.

Q. To the southeast? A. Yes.

(Testimony of Frank Liddell.)

Q. That is about all you can say, that it came somewhere from the southeast, isn't that right?

A. Came right on the same bearing all the time.

Q. Mr. Liddell, will you tell the court how you take a compass bearing on a noise?

A. Certainly. All you have to do is to look at the binnacle, take a look to see which way it comes from and you can tell if it changes.

Q. Can you tell a sound within one point of the compass?

A. One point, yes; but not one degree.

Q. Can you tell it within 8 points of the compass? A. Yes.

Mr. Cluff: Well, you ought to get signed on somewhere.

The Witness: Well, I am.

Mr. Adams: Just a minute. If the court please, I object to this argument. It is argumentative.

The Court: It is.

Mr. Cluff: I should not have made that statement. I am sorry and I withdraw it.

The Court: It will be stricken.

Mr. Cluff: That is all, Mr. Liddell. [465]

Mr. Adams: That is all, Mr. Liddell.

Mr. Black: I have a question.

Cross-Examination

Q. By Mr. Black: While you were lying there did you hear the bells of the "Olympic" being rung?

A. Yes; I heard proper fog signals by both.

(Testimony of Frank Liddell.)

Mr. Black: I move that the answer "proper" be stricken.

Q. By the Court: Well, you heard the same kind of signals at about the same intervals from both the "Sakito Maru" and also from the "Olympic"?

A. And from the "Olympic"; yes, sir.

The Court: All right.

Mr. Black: That is all.

Mr. Cluff: That is all.

Mr. Adams: That is all right, Mr. Liddell. [466]

Mr. Cluff: Do you want Captain Anderson back? I wonder if before I put him back on I can recall Mr. Stiles for just one question that was suggested to me during the recess?

The Court: All right.

STANFORD ROBERTS STILES

recalled.

Further Direct Examination

Mr. Cluff: Mr. Stiles, you have already been sworn.

Q. Mr. Stiles, you knew the "Olympic" when she was laying at Hermosa Beach?

A. Yes, sir.

Q. How far from the dock or your landing dock was she lying?

A. Right close to a mile.

(Testimony of Stanford Roberts Stiles.)

Q. About a mile? A. Yes, sir.

Q. Did you ever hear her bell ringing while you were on the dock?

A. Yes, sir; on various occasions.

Mr. Adams: Well, now, just a minute, if the Court please.

Mr. Cluff: That is all.

Mr. Adams: I object to the answer and move it be stricken upon the grounds it is incompetent, irrelevant and immaterial, no proper foundation laid.

The Court: Overruled. [467]

Mr. Adams: No showing that the conditions under which the bell was heard at that time were at all comparable to the conditions.

The Court: I think Captain Anderson testified he had the same bell all the time.

Mr. Adams: I mean there is no showing of conditions of weather and wind, etc.

The Court: That will have to be taken into consideration. That goes to the weight of the testimony.

Mr. Adams: Well, I think it goes to the foundation, if the Court please.

Mr. Cluff: That is all.

Cross-Examination

Q. By Mr. Adams: Mr. Stiles, have you ever had occasion when the wind was blowing in a certain direction and you were closer to the "Olympic" than one mile, when you couldn't hear her bell when it was being rung?

(Testimony of Stanford Roberts Stiles.)

A. Yes; with an engine running on the boat, if that is what you have reference to.

Q. Well, without any reference from engine noise.

A. Have I been closer than one mile and not heard the bell?

Q. Yes; and you knew or learned later that she was ringing her bell?

A. Never to my—never have I been closer than that [468] and not heard it.

Q. It is a fact, is it not, that the direction of the wind and many other factors influence whether you can hear a bell or signal in fog?

A. That is very true.

Mr. Adams: No further questions.

Mr. Cluff: That is all, thank you, Mr. Stiles. All right, Captain. [469]

JOAKIM M. ANDERSON

recalled.

The Court: May I make inquiry? Your first witness testified that the ground swells were coming in, I believe. Would that be indicative of the way the wind was blowing?

Mr. Adams: Well, no; not necessarily. In fact, we will show from our witnesses that the wind was blowing in practically the opposite direction of the swells. It was a light wind.

(Testimony of Joakim M. Anderson.)

Mr. Cluff: The log shows northeast, coming from the northeast.

Mr. Adams: But the swells were coming from the southwest toward the northeast.

Mr. Cluff: Well, your log shows the wind force 1 from the northeast. That is true, isn't it?

Mr. Adams: That is right. That is why I say the wind was blowing in the opposite direction from the swells.

Mr. Cluff: The wind would be carrying it out to sea.

The Court: Wouldn't that have the effect of making the fog signals on the "Sakito Maru" more audible to the "Olympic II" than the signals on the "Olympic II" to the "Sakito Maru"?

Mr. Adams: Well, the wind, the direction of the wind, according to our computations aboard the "Sakito", the wind was blowing in a southwesterly direction. That would be away from the "Sakito Maru". It would be in a southwesterly direction. She was approaching in a general southeasterly direction [470]

The Court: All right.

Mr. Adams: May Mr. Liddell be excused and no further questions?

The Court: Yes.

Further Cross-Examination

Q. By Mr. Cluff: Captain, Mr. Adams has spoken of the ballast in the "Olympic". How near did that ballast come to loading her to her cargo capacity?

(Testimony of Joakim M. Anderson.)

A. Just about half of the capacity that she will hold, going to sea. She should carry about 3000 tons dead weight, between 2700 or 3000.

Q. All right. What was the purpose of having ballast on the "Olympic"?

A. The ballast was put on board to keep the ship from rolling, so that people would not get sea-sick, and to bring her down to the level where everybody could fish in such a way that they could get in their fish.

Q. Did you ever hear of any ship that would lie at sea there at anchor without ballast in it?

A. No, sir.

Q. What would happen if you had the ship without ballast?

A. Well, here is a ship like the "Olympic", she always had a standing ballast, what we call standing ballast, about two or three hundred ton, which was in the ship when I bought her, and then I put twelve more hundred ton in her and that is [471] why I could figure she ought to have that much ballast.

Q. Without ballast she wouldn't ride, would she?

A. She will tumble over with all the masts and rigging on her.

Q. Answer these questions as quickly as you can because I want to get through this quickly here.

Q. You acquired the "Olympic" in 1937, overhauled her in San Francisco, and you brought her down here in the spring of 1939?

(Testimony of Joakim M. Anderson.)

A. That is right.

Q. Did you have a certificate of inspection when she came down? A. Yes, sir.

Q. Issued by what office?

A. San Francisco office.

Q. That was a certificate as a seagoing barge?

A. Yes, sir.

Q. And when you got her down here did you contact the local inspectors? A. I did.

Q. With reference to the inspection of the barge?

A. I did, and they demanded I surrender the certificate and Captain Kennedy got it.

Mr. Adams: Just a minute, Captain. I object to that upon the ground it is not the best evidence.

Mr. Cluff: Do you want me to produce the records here? [472]

The Court: The objection is good. And I don't know what materiality it is.

Mr. Cluff: Counsel has attacked the "Olympic's" seaworthiness. We propose to show by this evidence that the "Olympic" has complied, as best it could, with every rule and regulation required of her.

The Court: That does not make any difference what they attempted to comply with. It is a question as to what the law was on that date and whether or not she had complied with the law. Now, she did not have any accidents except the one——

Mr. Cluff: True.

The Court: On September the 4th. The con-

(Testimony of Joakim M. Anderson.)

dition of the vessel at that time and the status of the law is what we are interested in here.

Mr. Cluff: Very well. Now, Mr. Adams, then I invite from you a stipulation that this instrument, a copy of which I am showing you and which I believe I received from your office—you were kind enough to give me a copy—which is the findings of the A Board, with a letter from Director Roper to the Secretary of Commerce—

The Court: Why am I interested in the findings of the A Board, gentlemen?

Mr. Cluff: I don't think you are, except to follow the letter. The letter here recites—

Mr. Adams: Now, just a minute, Mr. Cluff.

The Court: Gentlemen, just a moment. As I understand, [473] the situation is this: It does not make any difference what was required of that boat if they had no legal right to require it. In other words, the status of the law at that time. Now, because some agency either enforced or did not enforce the law is immaterial. It is a question of what the law was at the time of this accident, what the law required, the nature of the inspection.

Mr. Cluff: I think it cuts a little deeper than that, your Honor. May I state my position here? As far as the statutory law is concerned, except for the purely technical matter of a certificate of inspection, the "Olympic" complied with it. Now, the inspectors had required her, by their order, to make certain structural changes and things of that character.

(Testimony of Joakim M. Anderson.)

The Court: But your question is: Did they have a right to require those things?

Mr. Cluff: And furthermore, the question of whether they had put them in effect yet. Mind you, these inspector's rules and regulations have the force, when they get in, almost of a statute; so it is very important to ascertain whether they regarded those, whether they were enforcing those, whether they were requiring it. And I propose to show by this letter from the director that, specifically with reference to the "Olympic" and all the others, the Department had decided that they would allow a reasonable time to comply with these regulations, and that time—— [474]

The Court: Who is that letter from?

Mr. Cluff: That letter is from Commander Field, Director of the Bureau of Navigation to the Secretary of Commerce.

Mr. Adams: If the Court please, I have a letter en route here from Captain Fisher which I intend to use as the basis for taking his depositions, if the statements of Captain Anderson are allowed to remain, that there was a certain excuse given to the "Olympic" for compliance; to the effect that there was no relaxation in those orders whatsoever. And I will ask leave of the Court to take the deposition of Captain Fisher, who is the surviving inspector for the Bureau of Marine Inspection and Navigation for this district. I think, in view of the statements made by Mr. Cluff——

(Testimony of Joakim M. Anderson.)

The Court: Just a moment. You have introduced a letter here where an appeal was made and signed by Mr. Field as director.

Mr. Adams: That is correct.

The Court: As I understand, the Department of Commerce promulgates certain rules and regulations.

Mr. Adams: That is correct.

The Court: And there were certain rules and regulations claimed, anyhow—I haven't seen them yet—for the requirements of these fishing barges and boats of this type. If those rules were in effect and there was a compliance with the statute, why, that is the situation in which that boat was operating. On the other hand, if the directors suspended the [475] operation of those rules for a definite period or an indefinite period, that presents a different picture.

Mr. Adams: That is very correct, and Captain Anderson said that they were given some sort of a suspension or exemption with respect to one item: I think it was the life boat equipment; and I intend to prove, and I ask leave to take the deposition of Captain Fisher to prove, that there was no relaxation in these orders and specifications in any respect whatsoever.

The Court: I know, but the one to determine whether there was or not was the department from which those rules emanated.

Mr. Adams: I have introduced a letter from the

(Testimony of Joakim M. Anderson.)

director of that department, stating that the appeals were denied and that the orders were in full force and effect.

The Court: Because somebody told this man he did not have to obey them does not mean anything.

Mr. Adams: Then, I take it——

The Court: In other words, there will have to be something from somebody in authority in the way of a letter or a bulletin of some kind. For instance, their contention is that they were to have a reasonable length of time to comply with these rules. I believe that is the contention.

Mr. Cluff: Yes.

The Court: Now, there has to be something. Just a word of mouth that some Coast Guardsman or somebody said that they didn't have a comply with the rules would not be binding, because that is beyond their authority. [476]

Mr. Adams: I might state, if the court please, that this letter that Mr. Cluff is attempting to introduce now contains some statement to the effect that the department, because there was some question about their jurisdiction, did not enforce the rules and regulations, or enforce the statute, or whatever it was, immediately, but gave them some time within which to comply. This controversy has been going on for several years.

The Court: You need not tell me anything about it because I was United States Attorney and I had it in my lap up there. We had it in our lap, so I

(Testimony of Joakim M. Anderson.)

know something of the controversy. And I have even discussed it with Captain Field in Washington—I think it is Captain Field.

Mr. Cluff: Commander Field.

The Court: Commander Field in Washington and had conferences on this thing; and I know something of the background of this dispute.

Mr. Adams: Now, this letter is therefore subject to ambiguity, if it is allowed to be introduced, as to what the writer of that letter was talking about when he said that they were allowed a reasonable time.

The Court: That is the letter from whom?

Mr. Cluff: That is from Commander Field to the Secretary of Commerce, dated March 24, 1941.

Mr. Adams: This controversy began, as the court recognizes, many years ago, and they did let things go in [477] status quo for about two years or more, and then finally they decided to exercise what they finally concluded was their power; and they sent out these specifications and there has been no relaxation of those orders since that date; and we will so prove by Captain Fisher.

The Court: Is not Commander Field the superior officer of Captain Fisher?

Mr. Adams: The whole point is that the letter of Commander Field does not show that there has been a relaxation. It does make a statement—

Mr. Cluff: Let me give the court the letter and he can determine whether there is a relaxation.

(Testimony of Joakim M. Anderson.)

Mr. Adams: I will ask the court to read the letter and pass upon my objection.

The Court: Why not take the deposition of Commander Field and get the real start of the controversy?

Mr. Adams: That is all right. I am willing to do that. I am perfectly willing to do that.

The Court: Of course, that should be a definite way. The fact is, a letter from Commander Field to the effect that there was no relaxation of that, you should be able to introduce that without the necessity of taking the deposition.

Mr. Cluff: As far as the original letter is in the files of the Secretary of Commerce, I am just simply taking Mr. Adams' story that this letter I have here is a true copy. I got it from him. [478]

Mr. Adams: Well, I got it from Miss Phillips.

Mr. Cluff: All right. And so on up, the big bugs have bigger bugs. I don't care about putting the A Board rulings in. Put them in or not. Read this letter.

Mr. Adams: Let me read the letter. I haven't read it for a long time.

The Court: Maybe you will consent to it after you read it.

Mr. Adams: Maybe I will. (After perusing letter.) I will stipulate to that and I will point out to the court the——

The Court: There will be room for argument, gentlemen. I am going to get all your evidence in

(Testimony of Joakim M. Anderson.)

on this and then study it, and let you people do your arguing of some of these facts orally or by brief.

Mr. Adams: I will stipulate to simply the fact that that is a true copy of a letter.

Mr. Cluff: A true copy of the letter from Commander Field. Well, will you put it this way:—all right; just that it is a true copy of the letter from Commander Field to the Secretary of Commerce which accompanied the report of the A Board .

Mr. Adams: That is right. And I object to it as incompetent, irrelevant and immaterial.

Mr. Cluff: All right. I offer it in evidence as the "Olympic's" next exhibit. [479]

Mr. Adams: I ask the court to read the letter in connection with the letter to Mr. Lansburgh by Commander Field in July of 1940.

The Court: It will be admitted.

OLYMPIC EXHIBIT No. 9

(Copy)

March 24, 1941

SAKITO MARU—OLYMPIC II

A7

Memorandum to the Secretary of Commerce
From the Director of the Bureau of Marine In-
spection and Navigation

(Testimony of Joakim M. Anderson.)

Attached is the report of the "A" Marine Investigation Board for the Pacific Coast with reference to their investigation into the collision which occurred on September 4, 1940, between the anchored American Fishing Barge "OLYMPIC II" and the Japanese Motor Freighter "SAKITO MARU" off the entrance to San Pedro harbor, Calif. As a result of the collision, the "OLYMPIC II" sank, with the loss of eight lives.

On page 4 of the findings and recommendations of the "A" Marine Investigation Board, it is stated:

"Some months previous to the disaster on September 4, 1940, the Bureau of Marine Inspection and Navigation had given the HERMOSA AMUSEMENT COMPANY notice of structural changes and additional equipment needed by the barge "OLYMPIC II" in order to make her reasonably safe for her employees and passengers. These changes and additions were never made."

For some time doubt had existed among officials of the Bureau and of the Department as to the right of the Bureau to inspect anchored barges of a type similar to the "OLYMPIC" and engaged in a similar business.

Officials of the Bureau and of the Department, therefore, met in conference, and it was decided that such vessels were subject to the inspectional jurisdiction of the Bureau. Thereafter the Bureau issued instructions covering the inspection of these

(Testimony of Joakim M. Anderson.)

vessels, and the owners were notified accordingly.

It was not deemed equitable, however, to require that the vessels immediately comply with the rigid requirements of inspection, and, therefore, the owners were given a reasonable length of time in which to comply with the requirements placed upon them. This was true in the case of the "OLYMPIC II".

The Bureau will take appropriate action on the recommendations of the Board, and I recommend that its report be accepted.

R. S. FIELD

Director

Att.

Accepted: /s/ ROBERT H. HINCKLEY

Acting Secretary of Commerce.

(cc: Miss Phillips;

Capt. Fisher, Alger)

[Endorsed]: Filed Sept. 18, 1941.

Mr. Adams: I would like to ask the court to read the letter previously introduced from Commander Field to Mr. Lansburgh in interpreting the letter which the court has just admitted.

The Court: Has that been introduced?

Mr. Adams: It has been introduced.

The Court: Oh, this is the one in the action on appeal?

Mr. Adams: That is right.

(Testimony of Joakim M. Anderson.)

The Court: I have read that.

Mr. Cluff: I am going to put in the appeal, so-called, just itself, just to complete the record.

The Court: I read the letter. I read it when it came in. I think it is a question of law that I will be interested in, even if they made the rules and regulations, and then if they had the force and effect of law, whether or not the director had authority to suspend their operations.

Mr. Adams: I think that would be a very pertinent point.

Q. By Mr. Cluff: Captain, do you recall, after these new rules were promulgated in June, 1940, you prepared in San Francisco an appeal from those rules? A. Yes.

Q. And I will show you a letter of July 9th, addressed [480] to Commander Field and bearing the typewritten signature of "S. Laz Lansburgh", attorney for Hermosa, and Captain J. M. Anderson? A. That is right.

Q. I will ask if you signed that letter?

A. Yes, sir.

Mr. Cluff: I will offer that letter in evidence.

Mr. Adams: That is objected to as a self-serving declaration; it is hearsay; it is incompetent, irrelevant and immaterial.

Mr. Cluff: I submit it may go in.

Mr. Adams: How could a brief advocating that the rules did not apply be material in this cause here?

(Testimony of Joakim M. Anderson.)

The Court: I can't see.

Mr. Cluff: Yes. And counsel has put in a letter denying the appeal. If the letter has any weight at all, you have got to know what the appeal was; otherwise, it might be an appeal from the requirement that they have 15 mess boys.

Mr. Adams: I think from the letter it is quite apparent what the appeal had reference to.

The Court: Mark it for identification. At this time I am going to deny its admission. Mark it for identification as a part of the record.

The Clerk: "Olympic's" 10.

OLYMPIC EXHIBIT No. 10

July 9, 1940

Commander R. S. Field,
Director Bureau Marine Inspection
and Navigation,
Department of Commerce,
Washington, D. C.

Dear Sir:

On behalf of my clients Captain J. M. Andersen, Master of fishing barge "Olympic II" and Hermosa Amusement Corporation, the owner of said vessel which is anchored off San Pedro, California, I hereby appeal from the decision and action of the local inspectors at San Pedro, California, requiring the subject barge to comply with the requirements

(Testimony of Joakim M. Anderson.)

set forth in the attached schedule, marked "Exhibit A" which is hereby specially referred to and by reference made a part hereof.

I believe that a resume of the history of this barge will be of interest: Prior to the year 1935 or 1936 we were advised by various agencies of the Federal Government that the barge did not require inspection and it is a fact that the Federal Government assumed no jurisdiction over the barge. Some time subsequent we were notified by the local inspectors that the barge required inspection. Pursuant to this notice we submitted the barge for inspection and complied with all orders issued by the local inspectors incident to the inspection and certification of the barge.

A certificate of inspection issued under date of April 8, 1938, was canceled and lifted by the local inspectors some time later in 1938, for the reason stated that the barge required a load line. Subsequently the local inspectors informed us that a load line was not required but they would not inspect the barge until requirements for equipment of various kinds, accommodations for persons on board and crew were promulgated.

In June 1940 we received a notice requiring various matters and things set forth in said "Exhibit A" hereto attached. Upon receipt of this notice we immediately contacted local inspectors for further information; following which we contacted the office of the Supervising Inspector in San Fran-

(Testimony of Joakim M. Anderson.)

cisco for the purpose of appealing from the action of the local inspectors. We were then informed that the Supervising Inspector was absent from San Francisco, and accordingly appointment was made with him for July 9th 1940.

The Supervising Inspector informed us that, except for some possible modifications with respect to "Olympic II" the requirements made by the local inspectors would stand.

We are appealing this matter to the Bureau because we feel that the requirements are onerous and cannot be complied with and will put us out of business.

It has been our practice and it is our intention to comply with the laws where possible, and we wish to point out that our barge has been inspected and certificated, while some of our competitors have refused and neglected to have their barges inspected, and nothing was ever done about it. This caused us very considerable expense.

You will see from "Exhibit A" that it is therein contended that Title 46 U. S. Code, Sections 395, 6, 7 and 8 require the various things specified in said "Exhibit A"; whereas the only equipment required by said sections is specified in Section 396, namely "at least one life boat, at least one anchor and suitable chain and cable and at least one life preserver for each person on board."

It is our contention that requirement of the other equipment set forth in "Exhibit A" is violative of

(Testimony of Joakim M. Anderson.)

the express provisions of Congress as enacted in said last mentioned Section.

The "Olympic II" is an iron vessel which is free from all leaks, all plates being in first class condition. The vessel is anchored off San Pedro breakwater about 3½ miles from the breakwater.

The expenditure necessary for compliance with the requirements of "Exhibit A" is prohibitory. The requirements for sea-going barges as set forth in the above numbered sections have been fully complied with.

Respectfully yours,

S. LAZ LANSBURGH,

Attorney for Hermosa Amusement Corporation and Captain J. M. Andersen

[Endorsed]: Filed Sep. 18, 1941.

Q. By Mr. Cluff: Captain, you have heard about this [481] lifeboat launching device. At the time of the collision was the same lifeboat launching device on that was on in 1937?

A. Yes, sir.

Q. That was approved by the local supervising inspector? A. Yes, sir.

Q. You received notice to that effect, did you?

A. Yes, sir.

Mr. Adams: Objected to upon the ground it is not the best evidence, incompetent, irrelevant and immaterial.

(Testimony of Joakim M. Anderson.)

Mr. Cluff: Well, let us give him the best evidence then.

Mr. Adams: Well, you might show it to me and then perhaps I would admit it.

Q. By Mr. Cluff: Do you happen to know Captain Fisher's signature, the supervising inspector? Will you stipulate that that is Captain Fisher's signature?

A. I couldn't—I presume that is.

Mr. Adams: I think it is.

A. I couldn't say to that.

Mr. Adams: I will stipulate to it.

Mr. Cluff: Offer it as the "Olympic's" next exhibit. Does the court care to look at it now?

The Court: After it is marked I will look at it.

Mr. Adams: Objected to as incompetent, irrelevant and immaterial, as not having any bearing upon the points involved out of the collision, since the letter was dated in [482] 1937.

The Court: I don't know whether it has or not. I am going to admit it.

OLYMPIC EXHIBIT No. 11

In Reply Refer to
File No. 7711

DEPARTMENT OF COMMERCE

Bureau of

Marine Inspection and Navigation

June 23, 1937

(Testimony of Joakim M. Anderson.)

Office of Supervising Inspector, 7th District

Room 14 Custom House

San Francisco, Calif.

Mr. J. M. Andersen, President,

Hermosa Amusement Corp.,

P. O. Box No. 437,

Hermosa Beach, California

Dear Sir:

Further reference is made to your letter of March 16, 1937, relative to the apparatus for handling the lifeboat on the fishing barge OLYMPIC NO. 2.

Please be informed that I gave this matter my attention and consideration, and also discussed it with the Local Inspectors at San Pedro. The Local Inspectors at San Pedro have informed me that they have approved the apparatus for launching the lifeboat which was installed on the barge OLYMPIC NO. 2.

If there is anything in the matter which is not concluded at this date, please so inform me.

Yours truly,

WILLIAM FISHER

Supervising Inspector,

Seventh District.

[Endorsed]: Filed Sep. 18, 1941.

Mr. Cluff: I don't think anything about the lifeboat launching here has any materiality. It is un-

(Testimony of Joakim M. Anderson.)

der attack and I have got to do the best I can with it. I have no further questions of Captain Anderson.

Cross Examination

Q. By Mr. Black: How old were your life belts on the "Olympic"?

A. They happened to be just two years old. They renewed them all, bought all new life preservers.

Q. You bought them personally, did you?

A. From C. J. Hendrie; yes, sir.

Mr. Black: That is all.

Mr. Cluff: Nothing further, Captain. [483]

Mr. Adams: If the Court please, our captain is in this building at the office of the Immigration. He came in last night by airplane from Mexico and underwent certain routine immigration examination last night and also this morning. It seems that when entry is made from Mexico there is more to do about it than from any other country, and apparently there is some requirement that a bond be posted during his stay in this country, which is not unusual. And he is now in the building. We have not had time yet to make arrangement for the bond. It might be that the immigration authorities would permit him to come down here to this court and commence his testimony; but I don't know how we are going to bring him down here without making arrangements for the bond, unless the Court or someone contact the Immigration and see if he

might come down here and still remain in the custody of the Immigration.

The Court: You might step in to my secretary and have her get in touch with the Immigration office.

Mr. Adams: Thank you.

The Court: Mr. Briggs can attend to it.

Mr. Adams: The captain is the witness that we intended to have on hand now.

The Court: Have you any other witnesses at this time?

Mr. Adams: No; not right on hand at this moment. I fully expected that the captain would be free from his immigration examination at this time.

[484]

The Court: You might find out when he will be available.

Mr. Adams: Will the Court excuse me to speak to Mr. Briggs about that?

The Court: Yes.

(Short intermission.)

Mr. Adams: If the Court please, the party Mr. Briggs talked to over the telephone is taking it up with the Inspector in charge and will call back here in a few moments.

The Court: I think we should find out whether he is immediately available, and if he is not immediately available, when he will be.

Mr. Adams: That is what, apparently, we won't

know until the Inspector in charge makes the investigation. It was explained to him that we wanted him to come down and testify in court and they could make arrangements to keep him in technical custody until the bond was posted, and I think probably those are the arrangements that they will permit.

The Court: We will wait just a moment and see. How many more witnesses have you?

Mr. Adams: In addition to the captain, about five.

The Court: You had better have those available this afternoon. They should have been available this morning.

Mr. Adams: We thought we had the captain. Of course, the captain will take some time. We have to speak through an interpreter, if the Court please, and that always takes more time. [485]

The Court: Have you arranged for an interpreter?

Mr. Adams: Yes; I have.

Mr. Cluff: Is Mr. Bischof going to interpret?

Mr. Adams: Yes; if he is in the court room.

Mr. Cluff: That is another thing we can agree on then, is the competency of the interpreter.

Mr. Adams: Quite so. He was in the court room this morning and I think he plans to be back here at two.

Now, if the Court please, I might take this time to offer the depositions of Mr. Yokota, Mr. Kato, and Mr. Shimada. The Court has already read

those depositions. And with that offer I also wish to offer the exhibits which are attached to the depositions into evidence. [486]

SAKITO EXHIBIT No. F

[Title of District Court and Causes.]

DEPOSITIONS OF T. YOKOTA, G. KATO AND
S. SHIMADA

Depositions of T. Yokota, G. Kato and S. Shimada, witnesses produced, pursuant to notices of intention to take depositions now on file in the above-entitled causes, on behalf of Respondent-Claimant-Petitioner and Cross-libelant Nippon Yusen Kabushiki Kaisya, now pending in said court, before Ross Reynolds, a Notary Public in and for the County of Los Angeles, State of California, in Suite 1100 Banks-Huntley Building, 634 South Spring Street, Los Angeles, California, on Wednesday, June 4, 1941, commencing at the hour of 1 o'clock p. m. [490]

Mr. Adams: Let the record show, Mr. Notary, that I have prepared in typewritten form, with several copies, a stipulation covering the depositions of the three witnesses to be heard today, and that these copies have been examined by counsel present. I will ask that the form of the stipulation

(Deposition of T. Yokota.)

as prepared by me submitted to counsel be copied into the record.

(The stipulation hereinabove referred to is as follows:)

It is Hereby Stipulated by and between all parties herein appearing or represented by counsel as follows:

1. That the depositions of T. Yokota, G. Kato and S. Simada, witnesses on behalf of the respondent, claimant, petitioner and cross-libelant, Nippon Yusen Kabushiki Kaisya, may be taken de bene esse, before Ross Reynolds, a notary public in and for the County of Los Angeles, State of California, at this time and place, to wit: 1:00 o'clock P. M., June 4, 1941, Suite 1100, 634 South Spring Street, Los Angeles, California, and thereafter continued from time to time as the taking of the depositions may be adjourned;

2. That the testimony and depositions of said witnesses may be taken in shorthand by said notary and shorthand reporter and thereafter transcribed into typewriting, under his direction, and filed with the clerk of the United States District Court, Southern District of California;

3. That the testimony and depositions of the said witnesses, when taken and transcribed, may, but need not be, [493] read or signed by the respective witnesses;

4. That all objections to the form and time of

(Deposition of T. Yokota.)

the notice of taking such depositions are hereby waived and that all objections to questions or answers are reserved until the trial, except objections to the form of a question, which shall be deemed waived unless noted at the time the question is asked;

5. That the testimony and depositions of such witnesses, when transcribed, may be offered in evidence by any party to any and all of the various causes pending in the United States District Court, Southern District of California, arising out of or in connection with the collision between the "Sakito Maru" and the "Olympic II" on September 4, 1940, with like effect as if the testimony and deposition of such witnesses had been taken separately in each of said causes;

6. That the foregoing stipulation shall apply to and include the limitation of liability proceedings commenced by the petitioner, Hermosa Amusement Corporation, Ltd., in the United States District Court, Southern District of California, numbered 1352-BH, and that the testimony and depositions of such witnesses may be considered as taken in such proceedings in the manner heretofore provided, to the same extent and with the same effect as if the respondent, claimant, petitioner and cross-libelant, Nippon Yusen Kabushiki Kaisya, were now a proper party litigant in such proceedings. [494]

Mr. Adams: I will ask now if that stipulation is agreed to by all counsel present.

(Deposition of T. Yokota.)

Mr. Cluff: So stipulated on behalf of the Hermosa Amusement Corporation and J. M. Andersen.

Mr. Black: So stipulated on behalf of Helen McGrath et al.

Mr. Scharf: So stipulated on behalf of J. Eldon Anderson.

Mr. Velpman: So stipulated on behalf of Elwood Johnson and Albertine K. Johnson.

Mr. Clough: So stipulated on behalf of the International Broadcasting Company and John Gilbert Montgomery, by his guardian ad litem, Marjerie L. Montgomery.

Mr. Eastham: So stipulated on behalf of Roger S. Culp.

Mr. Goldwater: So stipulated on behalf of Wilma Greenwood.

Mr. Lippert: So stipulated on behalf of Frank F. Mayo individually and as administrator of the estate of Roy A. Mayo, deceased.

Mr. Stearns: That stipulation is agreeable.

Mr. Briney: So stipulated.

Mr. Purpus: So stipulated.

(M. T. Bischof was sworn by the notary to act as English-Japanese interpreter.) [495]

T. YOKOTA,

a witness on behalf of the Respondent-Claimant-Petitioner and Cross-libelant Nippon Yusen Kabushiki Kaisya, being first duly sworn, testified, through the interpreter, as follows:

(Deposition of T. Yokota.)

Direct Examination

Q. By Mr. Adams: Mr. Yokota, will you state you full name, please?

A. Tokujiro Yokota.

Q. You are the chief officer, are you not, of the "Sakito Maru"?

A. Yes.

Q. And you were the chief officer of that vessel on September 4, 1940, were you not?

A. Yes.

Q. What license do you hold?

A. First grade master.

Q. How long have you held that license?

A. From January, 1940.

Q. Prior to that time, did you hold a first officer's license?

A. Yes; I did.

Q. And about what time did you receive that license?

A. In 1932.

Q. Prior to the time that you went to sea, did you take [496] any training in navigation?

A. Yes; I did.

Q. What training did you take?

A. The Kobe Higher Nautical School.

Q. How long did you attend that school?

A. Four and a half years.

Q. Did you graduate?

A. Yes; I did.

Q. After your graduation, what did you do?

A. I boarded a ship right away.

Q. And when was that?

A. In 1926.

Q. Have you been going to sea continuously since that time?

A. Yes; right along.

(Deposition of T. Yokota.)

Q. When did you first join the "Sakito Maru"?

A. In 1939; December 27, 1939.

Q. Did you join as first officer? A. Yes.

Q. And have you served in that capacity ever since? A. Yes.

Q. When was the "Sakito Maru" launched?

A. In October, 1938.

Q. When did she enter upon her first voyage?

A. In January, 1939.

Q. Do you know her length over all? [497]

A. 154½ meters.

Mr. Adams: Gentlemen, I might save some time here by asking leading questions on these dimensions, if no one has any objection.

Mr. Black: No objection.

Mr. Cluff: We have no objection.

Mr. Purpus: No objection.

Mr. Clough: No objection on our part.

Mr. Velpman: No objection.

Q. By Mr. Adams: The length of the "Sakito Maru" between perpendiculars is 145 meters, is it not? A. Yes; that is correct.

Q. And her breadth is 19 meters?

A. Yes.

Q. Her gross tonnage is 7,126.32 tons?

A. Yes.

Q. Are those metric tons?

A. Measurement tons.

Q. The net tonnage of the vessel is 3,900.09?

A. Yes, sir.

(Deposition of T. Yokota.)

Q. What compasses is the "Sakito Maru" equipped with?

A. A gyro compass and a magnetic compass.

Q. Where is the gyro compass located?

A. In the wheel house and on the compass bridge.

Q. That is the same place, isn't it? I mean the gyro compass. [498]

A. There is one in the wheel house and one on the compass bridge over the wheel house. We have two repeaters in the wheel house.

Q. Mr. Yokota, you have in the wheel house the gyro compass, do you not? A. Yes.

Q. And then you have one magnetic steering compass in the wheel house also, do you not?

A. Yes.

Q. And then the other magnetic compass that you speak of is on the compass bridge, is that correct? A. Yes.

Q. That is also the flying bridge, isn't it?

A. Yes.

Q. So you have three compasses in all, is that correct?

A. Do you mean magnetic compasses?

Q. Three in all, including the gyro compass?

A. We have a gyro with three repeaters and we have three magnetic compasses.

Q. You have already located two of the magnetic compasses. The third magnetic compass is on the poop deck, is it not?

(Deposition of T. Yokota.)

A. Yes; the poop deck, at the stern.

Q. What compass do you use for steering?

A. The gyro compass.

Q. Is there any correction of the gyro compass? [499]

A. No correction.

Q. Was there any correction as of September 4, 1940? A. No; there wasn't any.

Q. How many whistles is the vessel equipped with? A. Two whistles.

Q. What kinds?

A. One is a steam whistle and the other is an air whistle.

Q. On what voyage was the vessel engaged on September 4, 1940?

A. A New York voyage.

Q. Bound to what port?

A. From New York to Yokohama.

Q. On what day did the vessel sail from New York? A. August 21, 1940.

Q. The vessel came via the Panama Canal, did she not? A. Yes.

Q. What was the purpose of the vessel calling at Los Angeles Harbor?

A. For bunkers.

Q. For bunkers only? A. That is all.

Q. Do you know what the draft of the vessel was upon her arrival at Los Angeles Harbor on September 4, 1940?

A. The bow was 7.50 meters and the stern was 8.50 meters. [500]

(Deposition of T. Yokota.)

Q. Do you know what revolutions are turned by the engines when the vessel is proceeding at full ahead, with the revolutions regular?

A. 118 revolutions.

Q. And what revolutions are turned when the engines are going full ahead but the revolutions are reduced? When you are going full ahead on reduced revolutions, at what revolutions do the engines turn?

A. They turn at various revolutions.

Q. When the vessel is loaded as she was on September 4, 1940, at what speed, in your opinion, does the vessel proceed, when the engines are full ahead, at revolutions of 118?

A. 16 knots.

Q. And, under the same conditions, what, in your opinion, is the speed of the vessel when the engines are half ahead?

A. About eight knots or miles.

Q. And what is the speed of the vessel under the same conditions when the engines are at slow ahead?

A. 6½ miles.

Q. Mr. Yokota, the "Sakito Maru" is a merchant vessel, is she not?

A. Yes.

Q. Does she also carry some passengers?

A. Four passengers.

Q. How many hatches does the vessel have? [501]

A. Seven.

Q. How many hatches are forward of the bridge?

A. Three.

(Deposition of T. Yokota.)

Q. And where are the other hatches located?

A. Back of the bridge.

Q. Is there any other superstructure separating the hatches back of the bridge?

A. Where the crew sleep; their chambers.

Q. Is the distance from the bridge to the bow of the "Sakito Maru" 65 meters?

A. About 65 meters.

Q. Would you estimate that the bridge, when the vessel is loaded as she was on that day, is about 52 or 53 feet above the waterline?

A. About that.

Q. The "Sakito Maru" has two screws, has she not? A. Yes.

Q. And in what direction do those screws turn?

A. Outward.

Q. In other words, the port screw is left turn and the starboard screw is right turn, is that correct? A. That is correct.

Q. The vessel is powered by two Mitsubishi Diesel engines, is she not? A. Yes.

Q. And is it not correct that these engines are 2-cycle [502] single acting? A. Yes.

Q. They have direct connection with the shaft, have they not? A. Yes.

Q. And each engine has seven cylinders?

A. Yes.

Q. Mr. Yokota, what time did you go on watch on September 4, 1940?

A. At 3:55 a. m.

(Deposition of T. Yokota.)

Q. What officer was on watch when you went up on the bridge?

A. A. Kanda, an apprentice officer.

Q. He wasn't the officer that you relieved, was he?

A. The second officer.

Q. Apprentice Officer Kanda was on your watch, was he not?

A. Yes.

Q. Who else was on the bridge during your watch?

A. The quartermaster, by the name of Aono, and another quartermaster by the name of Namba.

Q. Was anyone standing lookout after you took over the watch at 4 o'clock?

A. There was one man, a lookout, right at the bow.

Q. Was his name Tamayama?

A. Yes. [503]

Q. He was an A. B. sailor, was he not?

A. Yes.

Q. How long did he remain lookout at the bow?

A. From 4 to 5 a. m.

Q. What was the condition with respect to whether it was light or dark at 5 a. m.?

A. It was daylight at that time.

Q. Approximately what time did daylight break?

A. The sun rose, I think, about 5:20 a. m.

Q. On what course was the vessel being steered when you came on watch?

A. At 340 degrees.

(Deposition of T. Yokota.)

Q. When you say 340 degrees do you mean 340 degrees true? A. True; yes.

Q. Your gyro compass course is the true course, is it not? A. Yes.

Q. Did you order any change in the course when you came on watch?

A. No; I did not.

Q. Did you take any bearings while you were on watch?

A. Not when I went up to the bridge.

Q. When was the first bearing that you took?

A. At 5:20 a. m.

Q. And did you take some bearings subsequent to that [504] time?

A. I took about three.

Q. Is this the chart that you were using aboard the vessel at that time? A. Yes.

Mr. Adams: I would like to have this chart marked for identification at this time and I suggest that it be marked as Yokota Exhibit No. 1 inasmuch as I have a series of exhibits to introduce, and we will probably have innumerable witnesses before we get through.

Mr. Cluff: Why not identify the chart by its number?

Mr. Adams: For the record, this chart is the chart of the U. S. Geodetic Survey No. 5101.

Q. Will you point out, Mr. Yokota, on this chart where you took the first bearing?

A. Right there.

(Deposition of T. Yokota.)

Mr. Adams: Let the record show the witness is indicating a line intersecting the line drawn for the course of the vessel, opposite which intersecting line is the notation "5:20" and "77½".

Q. Is that correct, Mr. Yokota?

A. That is correct.

Q. That was a 1-point bearing, was it not, Mr. Yokota? A. Yes.

Q. And on what point was the bearing taken?

A. From the south point of Santa Catalina Island. [505]

Q. Will you indicate the next bearing that was taken?

A. Right there as indicated.

Mr. Adams: The witness is indicating three sets of two intersecting lines each, which are toward Los Angeles Harbor from the intersecting line made at 5:20.

Q. Those three bearings were 2-point bearings, were they not?

A. Yes; they were 2-point bearings.

Q. And on what points did you take those bearings?

A. One was from the south point of the Island and the other was from Long Point on the Island.

Q. Both of those points were on Santa Catalina Island, were they not? A. Yes.

Q. Prior to the bearing that was taken at 5:20, what was the last bearing that the officer on watch had been able to take, prior to 5:20? I will with-

(Deposition of T. Yokota.)

draw the question. Prior to the bearing that you took at 5:20, when was the last bearing taken?

A. I don't understand you.

Q. When you came up on the bridge at about 4 a. m., the second officer had been navigating by this chart, had he not? A. Yes.

Q. What did the chart show with reference to any bearings that had been taken by the second officer when he [506] was on watch?

A. Right there.

Mr. Adams: The witness is indicating a piece of paper that is appended to this chart which is Yokota's Exhibit No. 1, which has another intersecting line with a circle and a dot, opposite which is marked "1:50" and the figure "218".

Q. Is that correct, Mr. Yokota?

A. Yes; that is correct.

Q. And on what point was that bearing taken?

A. The lighthouse south of Coronado Island.

Q. From that time, that is, from 1:50 a. m., to 5:20 a. m., when you took the bearing, the navigation was by dead reckoning, was it not?

A. Yes.

Q. You have already indicated that after 5:20 you took three 2-point bearings. Now, did you take still another 2-point bearing after those three?

A. Yes; when we were abeam of the lighthouse of that point there of Santa Catalina Island. I took it at that time.

Mr. Adams: Let the record show that the wit-

(Deposition of T. Yokota.)

ness is pointing out another set of two intersecting lines, with a dot and a circle around the dot, opposite which is marked "5:58".

Q. Is that the time that bearing was taken? [507]

A. Yes.

Q. Was that a 2-point bearing? A. Yes.

Q. Did you use the same two points as you did on the prior three bearings? A. Yes.

Q. After taking those bearings, did you correct on the chart the position of the vessel?

A. Yes; I did change it.

Q. This line beginning with the 2-point bearing immediately preceding the 2-point bearing of 5:58 which is parallel with the course that the vessel had been following on 340 true is what you drew at that time, is it not? In other words, the shorter of the two parallel lines is the line that you drew after the position of the vessel on the chart had been corrected? A. Yes.

Q. There is a dot with a circle around it on that line, opposite which is the mark "6". Does that designate 6 a. m.? A. Yes; 6 a. m.

Q. Was that position fixed by means of bearings? A. No.

Q. How did you fix that position?

A. There are only two minutes' differences in there and I based it on the speed of the ship at that time.

Q. Did you take any reading of the log? [508]

A. Yes.

(Deposition of T. Yokota.)

Q. Proceeding on that line toward Los Angeles Harbor, there is another dot with a circle around it, opposite which is marked "6:08"?

A. Yes.

Q. Is that a 2-point bearing? A. Yes.

Q. And was that bearing taken at 6:08?

A. Yes; that is the one.

Q. And was that bearing again taken on Long Point on the southeast end of Santa Catalina Island? A. Yes.

Q. Again proceeding on that line toward Los Angeles Harbor, there is another line with a dot, opposite which is marked "6:28", is that correct?

A. Yes; that is right.

Q. What does that represent?

A. That is the bearing I took at 6:28.

Q. That was a 1-point bearing, was it not?

A. Yes.

Q. And on what point was that bearing taken?

A. The southern point of Santa Catalina Island.

Q. Why didn't you take a 2-point bearing, using Long Point as another point?

A. Because, if you take Long Point, the color would be the same as the mountains there and you couldn't see it. [509]

Q. You mean Long Point became diffused in the background of the Island and it didn't stand out, is that correct? A. That is correct.

Q. Proceeding along that same line on this ex-

(Deposition of T. Yokota.)

hibit, there is a dot with a circle around it, opposite which is marked "7:00". Does that indicate 7 a. m.?

A. That is 7 a. m.

Q. And how did you fix the position of the vessel at that time?

A. I figured it on the basis from 6 a. m., at the speed of 16 miles per hour.

Q. You didn't take any bearings at that time?

A. No; I did not.

Q. Just beyond that dot with the circle is another dot with a circle, opposite which is a symbol for an anchor. What does that represent?

A. That is the position where we expected to drop the anchor.

Q. Was that position fixed by you prior to the collision or after the collision? A. No.

Q. Which?

A. It was after the collision.

Q. Was it fixed by taking any bearings?

A. No. [510]

Q. At what time was that position fixed?

A. After the collision.

Q. About how long after the collision?

A. I don't remember.

Q. Is that supposed to indicate the position of the vessel at anchor after the collision?

A. Yes.

Q. How did you fix the position of the vessel at that time?

A. Of course, we were running at slow speed and

(Deposition of T. Yokota.)

that is about the speed that I thought it would be.

Q. In other words, Mr. Yokota, that position indicating where you anchored is not supported by any bearings that you took?

A. That is correct.

Q. And it is simply an estimate? A. Yes.

Mr. Adams: I will offer this chart in evidence at this time but I would like to ask leave of counsel to substitute a photostatic copy of the chart so that I may have the original chart at the time the master of the vessel is interrogated. Is there any objection to that practice?

Mr. Black: You may retain it in your possession as far as I am concerned.

Mr. Adams: I would prefer that, if there is no objection on the part of counsel. [511]

Mr. Eastham: You may retain it as far as I am concerned.

Mr. Clough: So stipulated on our part.

Mr. Stearns: So stipulated.

Mr. Montgomery: So stipulated.

Mr. Adams: I take it, if there is no objection, that it is so stipulated by all counsel.

Mr. Montgomery: Will it also be stipulated we may have a photostatic copy if we so desire?

Mr. Adams: Yes; surely.

Q. Mr. Yokota, after you came on watch at 4 o'clock or about 4 o'clock, did the master of the vessel come up on the bridge?

A. Yes; he did.

(Deposition of T. Yokota.)

Q. At what time? A. At 5:58 a. m.

Q. Did you send for him?

A. Yes; I did.

Q. Why did you do that?

A. The second officer told me that the captain wanted to be advised as soon as we came abeam of the lighthouse of Santa Catalina Island, the southern point.

Q. How did you advise him?

A. At the time when we were that distance.

Q. I say how did you inform him? Did you send for him by someone?

A. I sent the apprentice officer, Kanda, to him.

[512]

Q. How long did the captain remain on the bridge when he came to the bridge? A. Two minutes.

Q. Did he give any orders to you on that occasion?

A. He told me to let him know when we got five or six miles off of the lighthouse in Los Angeles Harbor.

Q. Did he give you any instructions with respect to the course of the ship or the speed of the vessel? A. Nothing.

Q. How were your telegraphs set at that time?

A. Full speed ahead.

Q. You had been proceeding at full speed ahead, had you not, all the time you were on watch?

A. Yes.

Q. What was the condition of the weather at that time? A. Very good weather.

(Deposition of T. Yokota.)

Mr. Cluff: Are you referring to 5:58?

Mr. Adams: I am referring to 5:58.

Q. What was the condition of the sea at that time? A. It was smooth.

Q. Had the weather and the sea been in the same condition since you had been on watch?

A. It was the same.

Q. Did the captain return to the bridge after that first time? A. Yes; he did. [513]

Q. Did you send for him? A. Yes; I did.

Q. Did you send the apprentice officer, Kanda, for him? A. Yes.

Q. And what time did he come up on the bridge this second time? A. At 7 o'clock.

Q. And why did you send for the captain at that time?

A. Because we were about five miles from the Los Angeles lighthouse.

Q. What was the condition of the weather between 6 o'clock and 7 o'clock a. m. that morning?

A. It was good at about 6 o'clock and about 7 o'clock the front part of the ship got misty.

Q. When you say the front part of the ship, do you mean that ahead it got misty?

A. Just the front part of the ship.

Q. Was there good visibility on the port and starboard sides of the ship at 7 o'clock a. m.?

A. Yes; you could see very well port and starboard.

Q. Is that also true of aft of the ship?

(Deposition of T. Yokota.)

Q. At what time? A. At 5:58 a. m.

Q. Did you send for him?

A. Yes; I did.

Q. Why did you do that?

A. The second officer told me that the captain wanted to be advised as soon as we came abeam of the lighthouse of Santa Catalina Island, the southern point.

Q. How did you advise him?

A. At the time when we were that distance.

Q. I say how did you inform him? Did you send for him by someone?

A. I sent the apprentice officer, Kanda, to him.

[512]

Q. How long did the captain remain on the bridge when he came to the bridge? A. Two minutes.

Q. Did he give any orders to you on that occasion?

A. He told me to let him know when we got five or six miles off of the lighthouse in Los Angeles Harbor.

Q. Did he give you any instructions with respect to the course of the ship or the speed of the vessel? A. Nothing.

Q. How were your telegraphs set at that time?

A. Full speed ahead.

Q. You had been proceeding at full speed ahead, had you not, all the time you were on watch?

A. Yes.

Q. What was the condition of the weather at that time? A. Very good weather.

(Deposition of T. Yokota.)

Mr. Cluff: Are you referring to 5:58?

Mr. Adams: I am referring to 5:58.

Q. What was the condition of the sea at that time? A. It was smooth.

Q. Had the weather and the sea been in the same condition since you had been on watch?

A. It was the same.

Q. Did the captain return to the bridge after that first time? A. Yes; he did. [513]

Q. Did you send for him? A. Yes; I did.

Q. Did you send the apprentice officer, Kanda, for him? A. Yes.

Q. And what time did he come up on the bridge this second time? A. At 7 o'clock.

Q. And why did you send for the captain at that time?

A. Because we were about five miles from the Los Angeles lighthouse.

Q. What was the condition of the weather between 6 o'clock and 7 o'clock a. m. that morning?

A. It was good at about 6 o'clock and about 7 o'clock the front part of the ship got misty.

Q. When you say the front part of the ship, do you mean that ahead it got misty?

A. Just the front part of the ship.

Q. Was there good visibility on the port and starboard sides of the ship at 7 o'clock a. m.?

A. Yes; you could see very well port and starboard.

Q. Is that also true of aft of the ship?

(Deposition of T. Yokota.)

A. Yes; good.

Q. About how far do you believe you could see ahead of the ship at that time?

A. About three miles, I think.

Q. Did the captain give any orders when he came up on [514] the bridge at 7 a. m.?

A. Not at 7 o'clock.

Q. At what time did he give the first order?

A. At 7:03.

Q. What order did he give at that time?

A. Stand by engine and then slow.

Q. Who executed that order? A. I did.

Q. Did you execute the order on the engine-room telegraphs? A. Yes.

Q. Did you get a response from the engine-room immediately? A. Right away.

Q. Did you give those two orders on the telegraph one right after the other?

A. Yes; right away.

Q. Was there any other order given by the captain at that time?

A. That is all at that time.

Q. When was the next order that he gave?

A. When we saw the barge.

Q. I don't mean by asking you what orders he gave only what orders he gave with respect to the speed of the vessel. I mean did he give any other orders to you or to the helmsman or anyone else at that time? [515]

A. He gave the order to blow the whistle.

(Deposition of T. Yokota.)

Q. And what time did he give that order?

A. At 7:03.

Q. Who executed that order?

A. The first two times I blew the whistle.

Q. What was the duration of the blasts that you blew?
A. About a minute apiece.

Q. Do you mean that you blew the whistle a minute long or did you blow blasts at intervals of one minute? I will withdraw the question. How long was the first whistle that you blew?

A. About five seconds.

Q. When did you blow the next whistle?

A. About a minute after.

Q. And how long was that whistle?

A. About five seconds.

Q. Who blew the whistle after those first two whistles that you blew?

A. Kanda, the apprentice officer.

Q. Did he continue to sound the fog signal thereafter, that is, Kanda?

A. Yes; right along.

Q. And at what intervals did he sound the whistle?

A. About the same way that I executed the blowing of the whistle.

Q. Is that also true of the length of the blasts?

[516]

A. Yes; about the same.

Q. Did you time the intervals between whistles with a watch or clock?
A. No.

(Deposition of T. Yokota.)

Q. Did you time the duration of the blasts?

A. No.

Q. On what are your estimates based?

A. My experience.

Q. Did Kanda continue to blow the whistle in that manner up until the time of the collision?

A. Yes; right along.

Q. You have already described the type of whistles with which the vessel is equipped, have you not, Mr. Yokota? A. Yes.

Q. What type of whistle were you using for the fog signal? A. An air whistle.

Q. Have you subsequent to the collision made a test as to at what distance that air whistle may be heard?

A. After we got to Kobe, I tried that or examined it and tested it.

Q. What test did you make at Kobe, Mr. Yokota?

A. I sent a launch out from the ship and tested it in that manner.

Q. Were you on the launch?

A. No; I wasn't on the launch. [517]

Q. Did you send some of the crew out in the launch?

A. The third officer and the marine superintendent at Kobe.

Q. After the test was made, did they come back and report to you? A. Yes.

Q. What did they report?

Mr. Eastham: That is objected to as hearsay.

(Deposition of T. Yokota.)

Mr. Cluff: And we object to that as hearsay.

Mr. Adams: For the purpose of the record, I wish to state this was a test made under the supervision of the first officer, in the regular course of his duties, and the report was made to him by a member of the crew in the regular course of his duties.

Mr. Eastham: I also make the further objection that there is no foundation laid.

Mr. Cluff: And I add the objection that it was not in the regular course of his duties and was post litem motam for the purposes of this litigation.

Mr. Purpus: I join in the objections.

Q. By Mr. Adams: Mr. Yokota, let me ask you this. While the men were in the launch as you have described, was the air whistle of the "Sakito Maru" sounded?

Mr. Eastham: I object to that as immaterial.

Mr. Adams: Those objections are reserved.

A. I started the whistle and, as I did so, the launch [518] advanced.

Q. And, when the launch returned, did the men make a report to you at what distance they had heard the whistle? A. They did.

Q. And what did they report?

Mr. Cluff: To which we object on the grounds that it is hearsay and no foundation laid. And, while objections as to substance are reserved by our stipulation, I object to the question being answered as an obvious attempt to introduce palpably hearsay and incompetent evidence.

(Deposition of T. Yokota.)

Mr. Eastham: I join in the objection.

Mr. Montgomery: We join in the objection.

Mr. Adams: I object to the implication that it is an obvious attempt to introduce hearsay and incompetent evidence.

Mr. Cluff: I insist on all of the implications of that statement.

Mr. Clough: I join in the objection.

Mr. Purpus: I will join in the objection that it is hearsay.

Mr. Goldwater: And I join in the objection.

Mr. Black: And we make the same objections. I suppose it may be understood, unless somebody speaks up to the contrary, that we all join in the objections.

Mr. Adams: Will you read the question, Mr. Reporter?

(Question read by reporter.) [519]

A. That they could hear it positively at three and one-half miles distant.

Q. Mr. Yokota, have you, yourself, on any occasion ever been off and away from the vessel and heard the air whistle?

Mr. Eastham: I object to that as irrelevant and immaterial.

Mr. Montgomery: Also that there is no proper foundation laid in that the conditions under which the witness heard the whistle are not shown, that is, as to whether they were similar or the same as

(Deposition of T. Yokota.)

the conditions that existed in San Pedro Harbor on the day of the collision.

Mr. Adams: He has already answered that he has not. So it is all a moot dispute.

Mr. Montgomery: Anyhow, I want the record to show that the objection is made.

Q. By Mr. Adams: Mr. Yokota, during your experience aboard ships since 1926 have you had occasion to hear the whistles of many vessels?

A. I have.

Q. Have you had occasion to estimate the distance at which these whistles of various vessels have been heard by you? A. I have.

Q. Have you had occasion to compare the volume of the sound made by the air whistle of the "Sakito Maru" with [520] whistles of other vessels that you have heard? A. No; I have not.

Q. Based upon your experience, at what distance, in your opinion, could the whistle of the "Sakito Maru" be heard?

Mr. Montgomery: We object to that as no proper foundation laid.

Mr. Black: We also object for the same reason.

Mr. Goldwater: I thought it was stipulated all objections would be joined in unless objections were stated by somebody not joining.

Mr. Cluff: I think that will save time, that is, that silence means concurrence.

Mr. Montgomery: May I restate my objection to the question? There is no proper foundation laid

(Deposition of T. Yokota.)

in that there is no showing that the witness's estimates to which he has testified were correct.

Mr. Adams: Will you read the question to the witness, please?

(Question read by reporter.)

A. When there is no wind, you can hear it definitely at two miles.

Q. Mr. Yokota, what was the condition of the wind at about 7 o'clock a. m. that morning?

A. It was northeast and it was at the scale of 1, Beaufort's Scale.

Q. Was a notation made concerning the wind while you [521] were on watch?

A. Yes; there was.

Mr. Adams: I might state that I have here what is equivalent to the rough log, that is called aboard this vessel a memorandum log, and I have the smooth deck log, and I have photostatic copies of this memorandum sheet and a photostatic copy of the deck log for September 4, 1940. Perhaps my introduction of these records might be objected to as self-serving declarations but I think sooner or later all counsel will want these records to be introduced into the record here. And, if there is no objection, I am quite willing to offer them all at this time and have the witness identify them. Does anyone see any objection to that procedure?

Mr. Eastham: Where is the original log?

Mr. Adams: Right here. If no one voices any objection, may I assume there is none?

(Deposition of T. Yokota.)

Mr. Cluff: Let me ask you is that the smooth log which you have beside you?

Mr. Adams: That is the smooth log.

Mr. Cluff: You have a little memorandum sheet there beside you, about 3 by 5. Do I understand that that is all of the rough log or scrap log for the day of September 4th?

Mr. Adams: No; for this particular watch. That is my understanding.

Mr. Cluff: That is, it carries from 4 a. m. up to the [522] time of the collision?

Mr. Adams: That is my understanding.

Mr. Cluff: I have no objection to the witness identifying them. I think it is a good idea to get them in and get them marked.

Q. By Mr. Adams: Mr. Yokota, I show you what purports to be a memorandum and I will ask you what that is.

A. This is a bridge memo.

Q. Who keeps that bridge memo?

A. On my watch the apprentice officer keeps it.

Q. Does he keep it under your supervision?

A. Yes.

Q. Does this particular sheet which is before you represent the memorandum kept by Apprentice Officer Kanda during the watch from 4 a. m. to 8 a. m. on September 4, 1940? A. It is.

Q. There are Japanese characters at the head of seven columns there? A. Yes.

Q. Will you translate the titles of those columns, beginning from left to right?

(Deposition of T. Yokota.)

A. The first column is the time, then the reading of the patent log, the speed, the course, the deviation, the wind, the direction and force and the last column is the weather.

Q. There is one other Japanese character there or in [523] the first column and in the second line there are more Japanese characters. What are those?

A. The top is a. m. and the bottom is p. m.

Q. Referring again to this memorandum sheet, Mr. Yokota, were the entries in pencil made on that sheet all made by Apprentice Officer Kanda?

A. Yes.

Q. Were they made as of the time that the events happened which are recorded on there?

A. Yes; each time.

Q. While I believe all the entries are clear which are within the printed box at the top, I wish you would read the notations beginning with the first below that box, "5:58", and just read them off clear down to the bottom in the order in which they are shown.

A. "5-58 Santa Catalina Id. SE p't ab'm (250) 10½ miles off."

Q. Just a minute, Mr. Yokota. Was that entry made at the time the vessel was abeam the southeast point of Santa Catalina Island at 5:58 a. m.?

A. Yes.

Q. Was it made under your supervision?

A. Yes.

Q. What is the next entry?

(Deposition of T. Yokota.)

A. "Took in patent log showing 288."

Q. Is that the reading of the patent log, that 288? [524] A. Yes.

Q. Was that done at 5:58 also? A. Yes.

Q. What is the next entry?

A. "7-03 stand by engines and slow down engines. Attended fog signal."

Q. What is the next entry?

A. There is a "09" there and the figure "7" is lacking. "Stop & full astern."

Q. That has reference to the engines, does it, Mr. Yokota?

A. Yes. Next, the number 7 is lacking and the figure 11 appears and "stop".

Q. That means 7:11 and stop engine, does it?

A. Yes.

Q. And the next entry is what?

A. "13" with the figure 7 lacking. "Full astern both engines. 14", with the figure 7 lacking; "stop", that meaning starboard engine.

Q. What is the next entry?

A. "15", with the 7 lacking, "stop P.", meaning port engine. "17", with the 7 lacking; "let go S. anchor", meaning starboard anchor. "18", meaning 7:18; "slow ahead. 19", meaning 7:19, "stop", meaning the engines to be stopped. "Brought up anchors".

Mr. Adams: If there is no objection voiced by counsel, [525] I offer in evidence a photostatic copy of this memorandum sheet.

(Deposition of T. Yokota.)

Mr. Cluff: It is objected to as self-serving.

Mr. Black: We object to it as a self-serving document. I suggest it be marked for identification.

Mr. Adams: All right. I will offer it for identification. There is no objection to the use of the photostatic copy, I take it.

Mr. Cluff: Will you retain the original in your possession?

Mr. Adams: Yes. May I have the notary write his name and some designation on that original?

(The notary marked the original as Yokota Exhibit No. 2 and signed his name thereto.)

NO. **10190**
 UNITED STATES CIRCUIT COURT OF APPEALS
 FOR THE NINTH CIRCUIT
FILED

JUL 13 1942

PAUL P. O'BRIEN
 CLERK

*The State of Wash.
 Paul P. O'Brien, Clerk*

1138-64 Adm

Chypré ~~13~~
 SEP 10 1941
 Mch

時間	測程	示數	速度	計時	自差	風		天候
						向	力	
5 午	256	15.8	(340)			W	2	6
5	272.2	16.2	>					
6	288.0	15.8				NE	1	
7		16.0						
8		1.5				N	2	

記事 VPR 15:30Z

555 Santa Catalina Id 5 Sept

abn. < 750 > 10 1/2' 96

Took in p. log showing 288'

703 5/12 logs & obs. Attended log

log. 09 stop & full net 'stop

Rel. cont. fishery 15' stops

15' stop 1.

12 stop 5 9

19 stop

9 月 4 日

(Deposition of T. Yokota.)

Q. I show you what purports to be a photostatic copy of the sheets of the deck log for September 4, 1940, and I ask you if that is correct.

A. That is correct.

Mr. Adams: I will offer the photostatic copy for identification.

Mr. Cluff: May I ask a couple of questions before it is offered?

Mr. Adams: Yes.

Q. By Mr. Cluff: By whom was this smooth log of September 4th written up?

A. Under my watch, the Apprentice Officer Kanda writes it under my supervision. [526]

Q. And on the occasion of this particular log, when was it written up, what time?

A. On the afternoon of the day of the accident or the collision.

Mr. Cluff: There is no objection to its being marked for identification.

Q. By Mr. Adams: Mr. Yokota, what is the practice aboard the ship with respect to writing up the smooth log, at what time?

A. After a person's watch.

Q. Why was that not done on this occasion?

A. There was no time to write it.

Q. Why was there no time?

A. There was a lot of work there. We had to lower the lifeboats and lower the anchor and a lot of work to attend to.

Mr. Adams: Will you mark this as Yokota's Exhibit No. 3 for identification?

(Deposition of T. Yokota.)

Q. Mr. Yokota, it has been asked off of the record if it is the custom to keep your log in English? Is that so?

A. Our company has them all written up in English.

A. In other words, that is the custom aboard all vessels of the N. Y. K. Line, is it?

A. Yes; all vessels of our company.

Q. Mr. Yokota, returning your attention to the time of 7:03 a. m. of September 4, 1940, was anyone standing lookout [527] at the forecastle head prior to 7:03 a. m.?

A. No; there was no lookout.

Q. There had been none since daylight at 5 o'clock a. m., is that correct?

A. No; there was not.

Q. Did anyone stand lookout on the forecastle head after 7:03 a. m.?

A. Yes; there was.

Q. Who was that?

A. Shimada, a sailor.

Q. Is he an A. B. sailor?

A. Yes; he is an A. B. sailor.

Q. When did he go out there?

A. Right after 7:03.

Q. Are there any standing instructions on the "Sakito Maru" with respect to the sailors standing lookout when the fog signal is sounded?

A. Yes; there is.

Q. What are the instructions?

A. When they hear the fog signal, they are always to go there as lookout.

(Deposition of T. Yokota.)

Q. Did you see Mr. Shimada standing lookout out on the forecastle head after 7:03 a. m.?

A. I did.

Q. Where did he stand?

A. At the elevated place right in front of the fore- [528] castle head.

Mr. Adams: I would like to have these four photographs marked for identification in the order in which I hand them to you, Mr. Notary, and then I will refer to them.

(Yokota's Exhibits Nos. 4, 5, 6 and 7.)

Q. I show you a photograph, Mr. Yokota, which is marked for identification as Yokota Exhibit No. 4. What does that photograph show?

A. This is a photo of the "Sakito Maru".

Q. Showing the fore part of the vessel?

A. Yes.

Q. Where is the photograph taken from?

A. From the navigation bridge, I think.

Q. Was the vessel, on September 4, 1940, in the same general condition as shown in the photograph?

A. Yes; the same.

Mr. Adams: I offer that photograph in evidence.

Mr. Cluff: May we see it, please?

Mr. Stearns: Did he state when that was taken?

Mr. Adams: No. I didn't ask him.

Q. Do you know when that photograph was taken, Mr. Yokota?

A. No; I don't know that.

(Deposition of T. Yokota.)

Mr. Adams: I might state, Mr. Stearns, I know when it was taken if that would be of any assistance.

Mr. Cluff: Why don't you state it for the record? [529]

Mr. Adams: All right; I will state for the record that photograph was taken while the vessel was tied up at the Bethlehem yards either on September 4, 5, 6 or 7. She sailed, as I recall, on the 7th.

Mr. Cluff: Is that true of the whole set?

Mr. Adams: Yes; I think it is true of all of these photographs. You can recognize portions of Los Angeles Harbor in the photographs. Is there any objection to the photograph or my offer of it in evidence?

Mr. Cluff: There is no objection to the statement as to when or where it was taken.

Q. By Mr. Adams: I show you another photograph, Mr. Yokota, which is marked for identification Yokota's Exhibit No. 5. What does that show?

A. It is the forecastle of the "Sakito Maru".

Q. And that photograph was taken farther forward than the one just introduced, was it?

A. Yes.

Q. Does that show the general condition of the vessel as of September 4, 1940? A. Yes.

Mr. Adams: I offer that photograph in evidence. I might continue asking questions and, if anyone has any objections, they can voice them.

Q. I show you another photograph, Yokota's Exhibit No. 6 for identification, and ask you what that photograph shows. [530]

(Deposition of T. Yokota.)

A. This is the extreme fore part of the "Sakito Maru".

Q. Does that photograph show the structure of that portion of the vessel as of September 4, 1940?

A. There is no change.

Q. Mr. Yokota, is there a platform shown in that photograph? A. Yes; right there.

Q. Is that the platform upon which the lookout stood as you mentioned? A. Yes; right there.

Q. There is also a megaphone shown in that photograph. Is that a megaphone that the lookouts use?

A. It is.

Q. There is also shown in that photograph the bulwark of the vessel right at the extreme bow. How high is that bulwark above the deck?

A. 3½ to 4 feet.

Mr. Adams: I will offer that photograph in evidence.

Q. I show you still another photograph, marked Yokota's Exhibit No. 7 for identification. Does that also show the fore part of the vessel, including the platform you have just described?

A. Yes; right there; the same.

Q. Does that correctly show the structure of the vessel at that portion of the vessel as of September 4, 1940?

A. Yes; it is the same excepting that, when the lookout [531] was standing there, the megaphone was beside him.

Q. As shown in Yokota's Exhibit No. 6?

A. Yes; the same as that.

(Deposition of T. Yokota.)

Mr. Adams: I offer this photograph in evidence. I take it, if, after counsel have examined all of those photographs, no one voices an objection, that there is no objection.

Mr. Cluff: I understand they are offered simply for the purpose of showing the structure of the ship at the time of the collision.

Mr. Adams: Yes; and the other items that I have pointed out through the witness.

Mr. Cluff: Yes.

Q. By Mr. Adams: After you sounded the two fog signals yourself and Apprentice Officer Kanda took up sounding the whistles, what did you do?

A. I went outside of the wheel house and looked out forward.

Q. Did you continue to stand in that one position? A. I went to the left and right.

Q. Who all was on the ridge at that time?

A. Myself, the captain and Apprentice Officer Kanda and the quartermaster.

Q. Did you move about on the bridge?

A. Yes; I did.

Q. What were you doing as you were moving about and [532] standing in various positions?

A. I was looking forward.

Q. What was the captain doing at that time?

A. He was looking out forward, too, outside of the wheel house.

Q. And what was Apprentice Officer Kanda doing at that time?

A. He was blowing the whistle.

(Deposition of T. Yokota.)

Q. Was he doing anything else?

A. And he was also acting as lookout.

Q. The quartermaster, who was acting as helmsman, was at the wheel during that time, was he?

A. Yes; he was.

Q. Was he still steering a course of 340 degrees true?

A. Yes.

Q. There had been no change in that course, had there?

A. No.

Q. At what speed was the vessel proceeding, that is, how were the telegraphs set after 7:03?

A. Slow.

Q. I believe you testified that when the vessel was loaded as she was that day she made a speed of 6½ knots at slow ahead, is that correct?

A. Between 6 and 6½ miles.

Q. How long do you estimate it took for the vessel to decelerate to that speed after the engines were changed from [533] full ahead to stand by and slow ahead?

A. About three minutes, I think.

Q. So, at 7:06 a. m., you believe the vessel was proceeding at a speed of about 6 or 6½ knots?

A. Yes; I think so.

Q. Did you see anyone on the forecastle head before Mr. Shimada went out there and started standing lookout?

A. I saw an apprentice sailor by the name of Yokoyama standing there.

Q. What did you see him do after 7:03, when the first fog signal was sounded?

(Deposition of T. Yokota.)

A. He was working there about until 7:03 and as soon as he heard the whistle he looked forward.

Q. Did he stand on the platform and act as lookout?
A. Yes; he did.

Q. Did you see him there?
A. I did.

Q. Did you see him leave there when Shimada arrived on the scene?
A. Yes; I did.

Q. And you then saw Shimada stand on the platform and act as lookout, is that correct?

A. Yes; I did.

Q. What was the first notice that you received of the barge "Olympic II" being in the near whereabouts? I will withdraw that question. What was the first notice you [534] received of the presence of the "Olympic II"?

A. When Shimada, the lookout, megaphoned saying there was a ship ahead.

Q. Where were you standing at that time?

A. Outside of the wheel house.

Q. On what side?

A. I am not positive but I think it was the star-board side.

Q. After he sounded the warning, could you see the barge?

A. Yes; right away after he made the report.

Q. Where was it?

A. Right in front; approximately right in front.

Q. Did you see the barge clearly?

A. Not very clearly because I saw it through the fog.

(Deposition of T. Yokota.)

Q. Did it appear to lie at right angles to the course of the "Sakito Maru"?

A. About right angles.

Q. What did you do immediately after hearing that warning from the lookout and seeing the barge?

A. I ran to the wheel house and I telegraphed to the engines to stop.

Q. Did the master give you any order at that time?

A. Simultaneously he gave me the order.

Q. What order did he give you?

A. Stop engines. [535]

Q. Did he give you any other order?

A. And immediately he gave the order full astern.

Q. What did you do?

A. I telegraphed the engines the same order.

Q. In what manner did you operate the telegraphs?

A. I pulled it to stop and then pulled it astern two or three times.

Q. In other words, you jingled the telegraphs, did you not? A. Yes.

Q. And what was the purpose of jingling the telegraphs?

A. Because the more we jingle that thing, the engineers will increase the revolutions quicker.

Q. In other words, Mr. Yokota, when you jingle the telegraph in that manner, that indicates an emergency situation, does it not?

A. Yes. The engineer knows that.

(Deposition of T. Yokota.)

Q. Did you get an immediate response from the engine-room when you gave those signals on the telegraphs? A. Right away.

Q. Did you notice any change with respect to the engines from vibration or any other indication?

A. Yes; I did feel the vibration.

Q. What did that indicate to you?

A. It appeared to me that the engines were increasing in revolutions. [536]

Q. Did it indicate anything with respect to in what direction the engines were turning?

A. That they were going astern.

Q. At what time was this signal given by you on the telegraphs? You may refresh your memory, if you need to, from the log book.

A. At 7:09 I gave the signal full astern.

Q. And when was the signal stop?

A. At 7:11.

Q. As I understand you, you gave a signal on the telegraph of stop followed by a signal of full astern. Now, what time was the first signal of stop given?

A. At 7:09.

Q. It is the practice aboard your vessel, is it not, as most vessels, that events are logged according to the nearest half minute? A. Yes.

Q. Were there any other orders given by the captain at 7:09.

A. He gave orders to the quartermaster.

Q. What orders did he give?

A. Hard astarboard.

(Deposition of T. Yokota.)

Q. Did you see the quartermaster execute that order? A. I did.

Q. What did he do?

A. He, with all of his might, turned the wheel hard [537] astarboard.

Q. Prior to the time that the lookout called from the forecastle head, did you hear any signal from any other vessel besides the "Sakito Maru"?

A. I didn't hear any.

Q. Did anyone aboard the "Sakito Maru" make any report prior to that time of having heard any signal? A. Nobody did.

Q. After you sighted the barge, did you hear any signal from any other vessel?

A. After I saw the barge, just a little while after that, I heard the bell.

Q. Will you describe the sound that you heard made by the bell?

A. It was a continuous ringing.

Q. Did you see any people on the barge before the impact? A. Yes; I did.

Q. What were they doing?

A. They were fishing.

Q. Did you see any other vessels or craft in the vicinity besides the barge?

A. I saw a small motorboat on the other side of the barge.

Q. When you say the other side do you mean on the side opposite the side on which the "Sakito Maru" was [538] approaching?

A. Yes; that is right.

(Deposition of T. Yokota.)

Q. At what time did the "Sakito Maru" collide with the barge? A. At 7:10½.

Q. Did you notice any change in the course or heading of the "Sakito Maru" prior to the impact?

A. I think it changed just a little bit before the impact.

Q. In what direction?

A. To the starboard a little.

Q. At what angle do you believe the "Sakito Maru" struck the barge?

A. About right angles.

Q. What was the next order of the captain after the orders that you have already described?

A. After they hit, he gave orders to stop the engines.

Q. At what time was that?

A. At 7:11, I think.

Q. Who executed that order on the ship's telegraph? A. I did.

Q. You say you think that was at 7:11. Can you, by referring to the log book, refresh your memory and tell us definitely at what time it was?

A. I wasn't looking at my watch but it was about 7:11.

Q. Did you get an immediate response from the engine- [539] room at that time?

A. Right away.

Q. What happened with respect to the position of the "Sakito Maru" against the side of the barge or in any hole that the "Sakito Maru" made in the side of the barge?

(Deposition of T. Yokota.)

A. After we hit, it loosened up a little backwards.

Q. Did the bow of the "Sakito Maru" separate from the barge? A. A little bit.

Q. What was the next order given by the captain? A. Full astern, both engines.

Q. From your observations at the time, do you believe that the propellers of the "Sakito Maru" were working in a reverse direction at the time of the impact?

A. Yes; at the time we hit, they were moving in the opposite direction.

Q. About how fast do you think the "Sakito Maru" was proceeding at the time of the impact?

A. A mile and a half or two miles.

Q. What time was the order given by the captain, after the engines were stopped at 7:11, to put the engines full astern? A. At 7:13.

Q. That was two minutes after the stop order, is that correct? A. Yes. [540]

Q. Had the bow of the "Sakito Maru" separated from the barge more at 7:13 than it was at 7:11?

A. At 7:13 it was completely separated.

Q. At 7:13, before the engines were put full astern, the bow was completely separated from the barge, is that correct? A. Yes; it was.

Q. Did you remain on the bridge?

A. No; I did not remain there.

Q. When did you leave?

A. After I gave the signal at 7:11 of stop, I left the bridge.

(Deposition of T. Yokota.)

Q. What did you do then?

A. I went to the forecandle.

Q. Do you mean the forecandle head?

A. Yes; right to the bow.

Q. And what did you do when you got to the forecandle head?

A. I made the arrangements to lower the anchor.

Q. How many men are necessary for that operation? A. Besides me, two more.

Q. Were there two other men there besides you?

A. There were.

Q. Did you immediately make preparations to lower the anchor? A. Yes; right away.

Q. What did you do after those preparations were [541] completed?

A. At the order of the captain, I lowered the anchor.

Q. Did you notify the captain when your preparations were completed?

A. Yes; as soon as I finished those preparations, I let him know.

Q. And was it at that time that the captain ordered you to lower the anchor? A. Yes.

Q. Did you drop the anchor at that time?

A. Yes.

Q. Which anchor did you drop?

A. The starboard anchor.

Q. What did you do after that was done?

A. I went to the lifeboats.

Q. To the lifeboats or boat? A. Just one.

(Deposition of T. Yokota.)

Q. Where was that boat located?

A. On the port side.

Q. On what part of the ship?

A. The middle.

Q. What did you find when you got there?

A. The lifeboat had already been lowered.

Q. Was it in the water? A. Yes.

Q. Was anybody in the lifeboat? [542]

A. The second officer and sailors.

Q. One sailor? A. No; a lot of them.

Q. How many? A. Seven or eight.

Q. What did they do after that?

A. In charge of the second officer, they immediately went to the barge.

Q. Did you see them row in the direction of the barge? A. I did.

Q. What time was the lifeboat lowered into the water? A. At 7:20.

Q. And what time was the anchor dropped?

A. At 7:17.

Q. Can the lifeboat be lowered into the water while the ship is in motion?

A. Very slowly, it can be lowered.

Q. From your observations, was the lifeboat lowered in the water as soon as it could be under the conditions then existing?

A. As fast as they could.

Q. After the lifeboat was lowered into the water at 7:20, did you continue from time to time to observe the lifeboat?

A. Yes; I was looking at it off and on.

(Deposition of T. Yokota.)

Q. What was it and the men in it doing? [543]

A. They were going around the barge.

Q. When you say they were going around the barge do you mean that the barge was still afloat at that time?

A. They were going around the spot where the barge had sunk.

Q. And how long did they continue to do that?

A. About two hours.

Q. While you were still on the forecastle head and prior to leaving to go to the lifeboat, did you see the barge? A. Yes; I did.

Q. What did you observe? What did you see on the barge?

A. I saw two or three people on the barge.

Q. Did you see any other small boats in the vicinity?

A. Yes; I saw a small boat on the other side.

Q. Did you see the barge sink? A. I did.

Q. How long was that after you had arrived on the forecastle head?

A. About two minutes, I think.

Q. Did the lifeboat find any survivors?

A. They didn't find anybody.

Q. Did they find any bodies?

A. No; they did not.

Q. By the time the lifeboat returned to the "Sakito Maru", had the Coast Guard cutter arrived? A. Yes; it had. [544]

Q. What did the Coast Guard cutter do after it arrived?

(Deposition of T. Yokota.)

A. The Coast Guard officer went to the captain.

Q. Did the Coast Guard cutter participate in the search for survivors or bodies?

A. Together with our lifeboat, they were searching.

Q. What time did your lifeboat return to the "Sakito Maru"? A. At 9:15.

Q. Did the "Sakito Maru" continue to remain anchored in the same spot?

A. Yes; right along.

Q. Until what time?

A. 1:05 p.m. I made a mistake. It was noon.

Q. What time did the pilot arrive?

A. 11:50 a.m.

Q. Did you heave up anchor at noon?

A. Yes.

Q. Where did the vessel go then?

A. It went into the breakwater, inside of the breakwater.

Q. And did the vessel anchor inside of the breakwater? A. Yes.

Q. What time? A. That was 1:05.

Q. Then did the vessel heave anchor again and proceed into berth? A. Yes. [545]

Q. What time?

A. We hove anchor at 2 o'clock.

Q. And did the vessel go to the Bethlehem Shipyards at Los Angeles Harbor? A. Yes.

Q. And what time did she come alongside a berth at the Bethlehem Shipyards? A. At 3:30.

(Deposition of T. Yokota.)

Mr. Adams: I would like to have these photographs marked for identification in the order in which they are presented.

(Yokota's Exhibits Nos. 8, 9, 10, 11, 12, 13 and 14.)

I wish to state for the purpose of the record that I have here several photographs which have been exhibited to counsel and, with their permission, I shall proceed to explain the circumstances under which they were taken and what they purport to show; and then, if there are any objections to the foundation that I lay by my statement, I can lay a further foundation with the witness.

Yokota's Exhibit No. 8 for identification is a photograph taken of the bow of the "Sakito Maru" while she was tied at the Bethlehem Shipyards, within a period of four days following the collision occurring upon Wednesday, September 4th and the vessel sailing upon Saturday, September 7th. I don't recall exactly which day amongst those four days this picture was taken. And that is [546] true of the other photographs. This picture was taken from a small boat forward of the "Sakito Maru" and looking aft, showing the bow of the vessel.

Mr. Cluff: And before any repairs or changes in the situation had been undertaken?

Mr. Adams: Yes. I do know now, and that recalls it to me, that it must have been taken the first or second day because repairs were immediately undertaken, temporary repairs, and these pictures were

(Deposition of T. Yokota.)

taken before any of the repairs were made. With that explanation, I offer that photograph in evidence.

Mr. Cluff: There is no objection as far as I am concerned.

Mr. Adams: May it be understood there are no objections unless voiced by counsel? The next photograph, Yokota's Exhibit No. 9 for identification, is a photograph taken under the same circumstances, showing the starboard bow of the "Sakito Maru" and particularly the two holes stove in the starboard bow; and, also, it shows the dent at the stem. I offer that in evidence.

Yokota's Exhibit No. 10, the next photograph, shows the port bow of the "Sakito Maru", the photograph being taken under the same circumstances. I offer that in evidence.

The next photograph, Yokota's Exhibit No. 11, is another photograph taken under similar circumstances, showing, again, the starboard bow and the damaged portion thereof. [547]

Mr. Cluff: It also shows a staging on the side or a floating stage.

Mr. Adams: Yes; with two men working on it. I offer that in evidence.

Yokota's Exhibit No. 13 is a photograph at closer range, showing the first hole from the stem stove in the starboard bow of the "Sakito Maru". I offer that in evidence.

Yokota's Exhibit No. 12 is another photograph taken under the same circumstances, showing the second hole from the stem of the "Sakito Maru"

(Deposition of T. Yokota.)

stove in the starboard bow. I offer that in evidence.

Yokota's Exhibit No. 14 is another photograph taken under the same circumstances, showing the port bow of the "Sakito Maru". I offer that in evidence.

Q. Mr. Yokota, following the collision and when the vessel was tied up at the Bethlehem yards and before repairs were made, did you examine the damaged portion of the bow? A. I did.

Q. Have you also examined these photographs, Yokota's Exhibits Nos. 8 to 14 inclusive?

A. I did.

Q. Do they correctly and accurately show the condition of the bow of the "Sakito Maru" as of the time that you made your examination?

A. They are the same. [548]

Q. Were the various holes stove in the port and starboard bow of the "Sakito Maru", as shown in these photographs, in existence prior to the collision?

A. There were no holes before the collision.

Q. Is that also true of this dent on the stem?

A. That wasn't there, either.

Q. And is that also true of the scrapings and other damage shown on the port side of the "Sakito Maru" at the bow, as demonstrated in Yokota's Exhibit No. 10?

A. It was not that way before the collision.

Q. Mr. Yokota, the gyro compass of the "Sakito Maru" is also equipped with a course recorder, is it not? A. Yes.

(Deposition of T. Yokota.)

Q. I show you what purports to be a record made of the course of the "Sakito Maru" for September 4, 1940, and ask you if that is the record made on the gyro compass course recorder of the "Sakito Maru" for that day. A. Yes; it is the same.

Q. That recorder records only the heading of the vessel, does it not? A. Yes.

Q. It does not record speed, does it?

A. No.

Q. It does record, however, the lapse of time, does it not? I mean that it shows the course of the vessel as of any given time? [549]

A. Yes; it does show the time.

Q. On the right-hand side of that record there are large figures, 1, 2, 3, 4, 5, 6, 7 and so forth.

A. Those are the numbers for the time, indicating the time.

Q. Those indicate the hours, do they not?

A. Yes.

Q. Between each figure indicating an hour there are five lines, are there not? A. Yes.

Q. And each one of those squares represents 10 minutes, does it not? A. Yes.

Q. Or, putting it another way, each line represents 10 minutes? A. Yes.

Q. What does that record show with respect to the course of the "Sakito Maru" from 1 o'clock a. m., September 4, 1940, until 7 a. m., September 4, 1940? A. 340 degrees.

Q. The line which closely follows the line marking 340 degrees gives some appearance of being zig-zagged. What causes that?

(Deposition of T. Yokota.)

A. That is on account of the swell or any waves that causes that.

Q. Those are slight variations in course normally [550] experienced in the steering of a vessel, are they not? A. Yes; always.

Q. According to that record, up until what time was the "Sakito Maru" on a course or 340 degrees true?

A. Just a little before 7:10 a. m.

Q. What does the line which runs to the left from the course 340 to the course 350 indicate?

A. That indicates when the bow of the ship turned.

Q. Does that indicate that the bow of the ship turned in one direction or the other 10 degrees?

A. It is about 10 degrees.

Q. And in what direction did the bow or heading of the ship turn 10 degrees?

A. It went from 340 to 350 to the right.

Q. That would be to the right or the starboard, would it not? A. Yes.

Q. After the line which indicates that change in heading, there is another line paralleling the line for 7:10 a. m., running from course 350 over to course 320. What does that indicate?

A. That is an indication that the bow of the ship turned.

Q. In what direction?

A. It is 320 degrees. That would make it the port.

Q. And what do you believe was the reason for

(Deposition of T. Yokota.)

the [551] change of the heading of the vessel to the port at that time? A. That I don't know.

Q. What was the time of the impact?

A. 7:10½.

Q. That line which we have just been talking about, according to this regulator, is made approximately as of 7:10½, is it not? A. Yes.

Mr. Black: Which line? The line from 350 to 320?

Mr. Adams: Yes.

Q. Beginning with the line where it intersects the course for 320, it zigzags from there over to a course for 360. What time was that line made, that is, between what times?

A. Between 7:12 and 7:28.

Q. What was the time that the engines were put full astern after the engines were stopped immediately after the impact? You may refer to the log book. A. At 7:13.

Q. What time was the anchor let go?

A. At 7:17.

Q. What is the next order executed on the engines after 7:17? A. 7:18, slow ahead.

Q. What is the next order executed with reference to [552] the engines at 7:18?

A. 7:19, stopped engines.

Q. The vessel rode at anchor, with her engines stopped, from 7:19 until noon, did she not?

A. Yes.

Q. Are the changes in the heading of the vessel, as shown on this gyro compass course recorder, from

(Deposition of T. Yokota.)

7:19 simply changes of heading of the vessel while she rode at anchor?

A. Yes; that is correct.

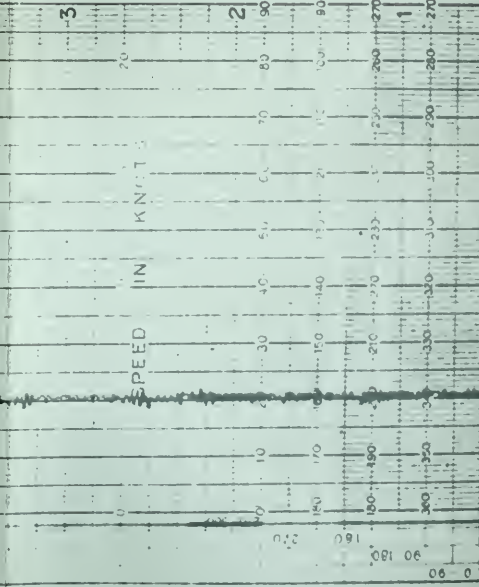
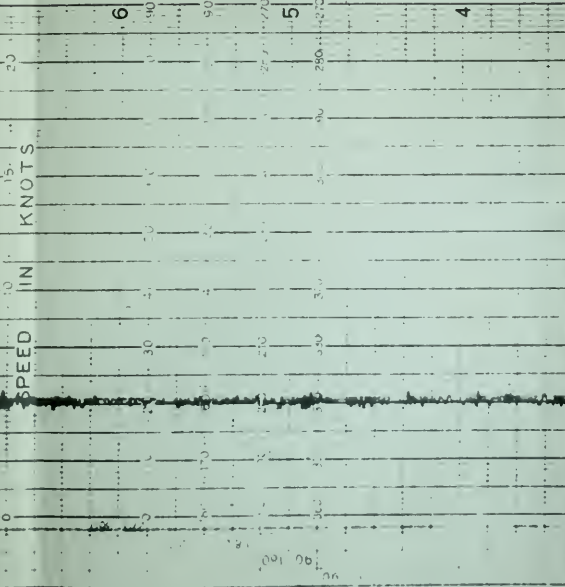
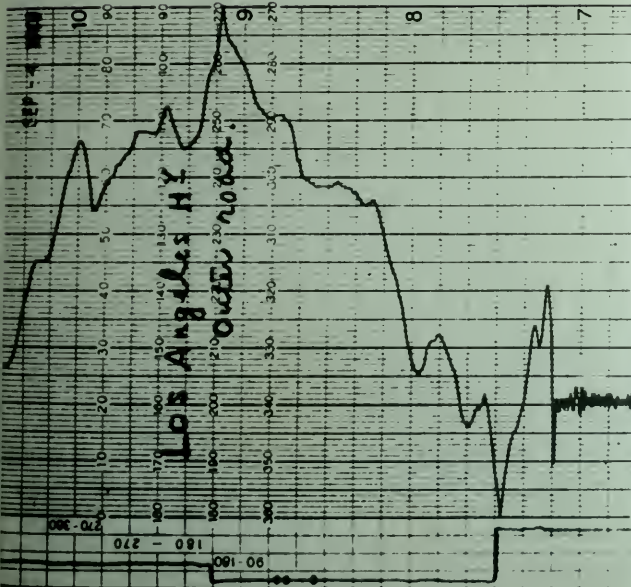
Mr. Adams: I would like to offer, in place of the original gyro compass recorder record, a photostat which I have had made of that record, showing from at least 1 o'clock a. m. until 10 o'clock a. m., September 4, 1940. Is there any objection to the offer of the photostat?

Mr. Purpus: Are you going to have the original in court?

Mr. Adams: Yes; I will.

Mr. Black: As long as it will be available in your office, I have no objection.

Mr. Adams: The witness says it is all right.



SEP 4 1948

(Deposition of T. Yokota.)

Mr. Purpus: In other words, all of the papers you have introduced here today, for which you are putting in photostats, you will have at the date of trial?

Mr. Adams: I suppose so. I hoped it wouldn't be necessary to keep the log books unless there was some particular [553] reason for it. I have photostatic copies of the engine-room and deck logs and everybody is welcome to make a comparison at this time.

Mr. Purpus: The only purpose I have is, if something should arise in the meantime, I think it should be there at the date of trial.

Mr. Cluff: I think your point is well taken.

Mr. Adams: Of course, this occurred in the middle of a voyage and contains a great deal of operating data that I couldn't deprive them of. I left these log books aboard the ship after having made photostatic copies. It may be they are through with them and I would like to talk to the witness again off of the record about it.

Mr. Cluff: I would like to have the log books available.

(Discussion off the record.)

A. This is a record of the ship and we must keep them on board ship.

Mr. Purpus: The only point is, if it becomes material and if this man is not present on the day of trial, and one or the other of us would for some reason need this log book, it would place us in a

(Deposition of T. Yokota.)

bad position. You are going to use this deposition, as I understand, as the testimony of this witness, if he is not present at the trial.

Mr. Adams: That is right.

Mr. Black: Perhaps, if it were explained to the witness that it is not permanent but that the records can be [554] returned to the company after the case is over, it might make a difference.

Mr. Adams: I suppose so.

Mr. Black: Would you mind explaining that to him, Mr. Adams?

Mr. Adams: What our purpose and intent is, Mr. Yokota, is to keep the log books in our possession until after the trial is over and then return them to the company.

A. It is a record of the ship and we must keep them aboard ship.

Mr. Purpus: Now they are under the process of the court.

Mr. Adams: No; they are not unless someone issues process. I am willing to have photostatic copies made of any particular parts of the log books that anyone may want.

Mr. Purpus: As far as I am concerned, you can keep them here in your office until we are satisfied we do not need them.

(Discussion off the record.)

Mr. Adams: We will pass that up for the time being. Now, if there is no objection to the offer of the photostatic copy of the gyro compass record, I

(Deposition of T. Yokota.)

will retain the original gyro compass record in the office.

Mr. Purpus: There is no objection to that.

Mr. Adams: You may cross-examine.

Mr. Cluff: If it is agreeable to everybody, I will start out and then you gentlemen can pick up the pieces. [555]

Mr. Stearns: Before you start out, I would like to offer this statement, that, if Mr. Cluff is going to cross-examine, the questions and answers may be asked as far as I am concerned for Miss Mayo, with the right to ask any additional questions I may have.

Mr. Cluff: I take it that is understood among all of us; that the examination is not necessarily binding on anybody and that they may ask additional questions.

Mr. Adams: I want to make this statement. If other counsel avail themselves of the testimony elicited by questions asked by Mr. Cluff, I think it should be understood that they should be, likewise, bound by that testimony, that is, that you can't, after it is all over, sift it over and pick out those portions that you like and not be bound by those questions that you don't like.

(Discussion off the record.)

Cross-Examination

Q. By Mr. Cluff: Mr. Yokota, when was the course of 340 true first set?

A. On September 3rd.

(Deposition of T. Yokota.)

Q. September 3rd?

A. Yes: at 9:05 a. m.

Q. And did you have a land fall or other land position at that time on which that course was set?

A. San Benito Island light, northwest side of West [556] Island, abeam 141 $\frac{1}{2}$ miles. That is the time when we fixed the course.

Mr. Cluff: Will you read that answer back?

(Answer read by reporter.)

Q. And of course, you were outside of the Island then?

A. Yes: outside.

Q. Was there any change in course up to the time you came on watch at 4 o'clock on the morning of September 4, 1940?

A. There was no change.

Q. That is, the course of 340 true was substantially made good right from the San Benito Island light to the point of collision?

A. Yes: the same.

Q. And was there any change in speed between the setting of that course at San Benito Island until the engines were slowed at 7:03 on September 4th?

A. We did not change the speed very much. There was a very little change in it on account of the waves and the swell.

Q. There was no change in the engines, that is, she continued on a course of full ahead and of 340 true from the hour and minute you have given us.

(Deposition of T. Yokota.)

when the San Benito light was abeam, up until 7:30 on the morning of September 4th?

A. There was no change. [557]

Q. Did you change the clocks at any time from taking that departure at San Benito Island until the time of the collision?

A. The clocks were retarded on September 4th at 2 a. m. 15 minutes.

Q. At 2 a. m. on September 4th?

A. Yes.

Q. They were retarded then 15 minutes?

A. Yes.

Q. That was the only change of the clocks from the San Benito Island departure?

A. That is all.

Q. After leaving San Benito, do you have any other land falls until you made the land fall off of the Coronado Islands to which you have testified?

A. That is all.

Q. Just San Benito and the next land fall you got was the Coronado Islands? A. Yes.

Q. The times that you have given here, Mr. Yokota, were taken from what clock?

A. The clock in the wheel house.

Q. Will you tell us just where in the wheel house that clock is located?

A. On the starboard side of the wheel house.

Q. Where with reference to the door leading out to the [558] starboard wing of the bridge?

A. Back of the door.

(Deposition of T. Yokota.)

Q. Right aft of the door?

A. Yes; back of the door.

Mr. Adams: I will state for the record that Mr. Cowell, after conferring with the master of the ship and the manager of the N. Y. K. Line, has told me that we may retain the log books in our possession until after the litigation is over.

A. As long as the captain says it is O. K., it is all right.

Q. By Mr. Cluff: It was the practice on the "Sakito Maru" for the apprentice officer to keep the scrap book or memorandum log, was it?

A. Yes.

Q. And where was he stationed at the time he was keeping that log? Did he keep it on a desk in the pilot house? A. On a table there.

Q. And from 7:03 on September 4, 1940, was he stationed at that table?

A. Right at 7:03 or after 7:03?

Q. From 7:03 up to the time of the collision.

A. He wasn't at the table all the time.

Q. He moved about in the wheel house, did he?

A. Sometimes he would put it in his pocket and sometimes he would hold it in his hand and make notations. [559]

Q. Are those little sheets kept on a pad or a block?

A. They are made in sort of a little book.

Q. When the apprentice officer makes those notations, does he do so on instructions from the watch officer in each case? A. Yes.

(Deposition of T. Yokota.)

Q. He doesn't make any notations at all unless he is specifically instructed by the watch officer, is that right?

A. Even without any orders from the officer on watch, on special occasions he makes notations himself.

Q. For example, if the order went out to slow the engines, he would make that notation as soon as he heard the order given, without any instructions, is that true? A. That is right.

Q. And he would take the time himself, that is, when he heard the telegraph ring, he would look at the clock and verify the time and put it down on his memorandum, is that right?

A. That is right.

Q. Does the clock have a second hand?

A. Yes.

Q. And is that a big second hand that covers the whole dial of the clock or just a small second hand like a watch? A. It is small.

Q. It is the practice, I think you said, to take the time within the half minute? [560]

A. Yes.

Q. And very often the apprentice officer is so far from the clock that he can't see the second hand and he will simply put down the time from the way the minute hand looks, close to the nearest minute, is that right?

A. Yes, because he can't see the second hand.

Q. As to these various bells to the engines to

(Deposition of T. Yokota.)

which you have testified and which you have read from the scrap book, you did not take those times yourself, did you?

A. No; I didn't make them.

Q. So, when you testified, for instance, that a bell was rung at 7:11, you were simply testifying from the notations in the log which were made by the apprentice officer?

A. Yes.

Q. Is the apprentice officer, Mr. Kanda, now on the "Sakito Maru"?

A. No; he isn't.

Q. Do you know on what vessel he is?

A. He went from the "Sakito Maru" to the "Toyohashi Maru". After that I do not know where he went.

Mr. Adams: I might state for the purpose of the record that we will take his deposition as soon as he is available.

Q. By Mr. Cluff: At 7:03, when you got within four or five miles, I think you said five miles, of the Los Angeles breakwater light, then you sent the apprentice officer to call the captain, did you? [561]

A. No; at 7 o'clock.

Q. At 7 o'clock, when you sent for the master, were there any signs of fog?

A. No; there was no sign of fog.

Q. No sign of fog at all?

A. It was a little misty away forward.

Q. What do you estimate the visibility forward at 7 o'clock?

A. Three or four miles.

(Deposition of T. Yokota.)

Q. How long did it take the captain to come on the bridge after you sent for him?

A. Not a minute.

Q. After he arrived on the bridge, the first order he gave was at 7:03, was it? A. Yes.

Q. And that order was what?

A. Stand by engines and then, after that, slow.

Q. At that time, at the time that stand by was given, what was the condition of the weather with respect to fog?

A. There was a light fog.

Q. And that, I believe you said, was just ahead and was not on either side?

A. No; just in the front.

Q. At what time with reference to the stand by bell did the lookout, Mr. Shimada, go out on the platform on the forecastle head? [562]

A. Right after 7:03.

Q. That is, you saw him go out there and exchange with the apprentice seaman right after 7:03?

A. I did.

Q. How long prior to the time that he megaphoned that there was a ship ahead had he been standing there on the platform?

A. Do you mean Shimada?

Q. Shimada; yes.

A. About six or seven minutes.

Q. And do you know that of your own knowledge, do you?

A. Yes; I know that. But I didn't look at any watch.

(Deposition of T. Yokota.)

Q. Did he remain on that platform there right up in the bow of the ship or did he move from place to place on the forecastle head?

A. Just in the one position.

Q. How did Shimada know that it was his duty to go to the forecastle head as lookout?

A. Because it was his watch.

Q. And on each watch is the one man designated to go on lookout when he hears the whistle?

A. It depends on the hours that they have to go on watch.

Q. Your ordinary watch is four hours, is it not?

A. Do you mean the lookout men?

Q. That is, the officer and the quartermaster, the [563] apprentice and the lookout. Their tour of duty is four hours, is it? A. No.

Q. What is the period on the "Sakito Maru", the period of the watch?

A. Myself and the apprentice officer four hours and the two quartermasters divide up four hours, one hour apiece between them.

Q. How about the lookouts?

A. One hour.

Q. So in each four-hour watch there would be four men who successively would have the duty to act as lookout? A. Yes.

Q. Is there a station list maintained on the bridge so that the men know when their turn is and their hour is to act as lookout?

A. No; there is no such list.

(Deposition of T. Yokota.)

Q. Did the fog remain about the same and of the same density from 7:03 up to the time the lookout megaphoned that there was a ship ahead?

A. No; it got deeper and deeper or heavier and heavier.

Q. Did it get heavier rapidly or did it get dense very quickly after 7:03 or was it gradual?

A. Gradually.

Q. And at 7:03, when you put the lookouts out, you think the visibility was around three miles or so, do you? [564]

A. No; I think about two miles.

Q. About two miles at 7:03? A. Yes.

Q. At the time the lookout reported that something was ahead, what is your opinion of the visibility at that time?

A. About 200 meters.

Q. How do you determine that 200 meters? Is it by an estimate of the distance the barge was when you first saw it?

A. From my experience.

Q. How far away was the barge when you first saw it?

A. As I told you, 200 meters.

Q. I guess you didn't understand my question. I asked you, first, what was your estimate of the visibility at the time the lookout first reported.

A. 500 or 600 meters.

Mr. Adams: I would like to inquire whether you mean by that, Mr. Cluff, when the lookout

(Deposition of T. Yokota.)

first reported on the forecastle head or when he first reported to the bridge.

Mr. Cluff: I am directing my question to when the lookout first reported a ship ahead.

Mr. Adams: I would like to have that question put to the witness with that understanding.

Mr. Cluff: All right. Let me ask the interpreter to ask the witness what he understood by the question when the lookout first reported.

A. I don't understand that question. [565]

Mr. Adams: I ask that the witness be informed as to what you had in mind, Mr. Cluff, at the time you asked the question.

Mr. Cluff: The witness evidently didn't have any difficulty in understanding me then.

Mr. Adams: I think the question was confusing.

Mr. Cluff: I will ask the question again.

Q. What is your estimate of the visibility ahead at the time the lookout reported that a ship was ahead? I am asking for your estimate of the visibility from the bridge.

A. As I have already told you, I think between 500 and 600 meters.

Q. At the time the lookout reported that vessel ahead, I believe you, Mr. Yokota, were on the starboard wing of the bridge?

A. I think I was on the starboard wing of the bridge.

Q. Were any other of the watch on the outside of the bridge with you?

A. The captain was there.

(Deposition of T. Yokota.)

Q. And the quartermaster and the apprentice were inside of the wheel house, were they?

A. Yes.

Q. You and the captain were together, within a few feet of each other, were you?

A. I don't remember that.

Q. Where are the telegraphs, the engine-room telegraphs, [566] located on the bridge and wheel house?

A. On the port side of the wheel house.

Q. There are none on the wings of the bridge?

A. No; there are not any there.

Q. On the port side of the wheel house there are, I presume, two handles, one for the starboard engine and one for the port engine, are there?

A. Yes, sir; two handles.

Q. Upon seeing the barge ahead, you went at once to the telegraph, did you?

A. I ran there; yes.

Q. And you set the engines at stop?

A. Yes.

Q. You did that without a direction from the master?

A. Without orders.

Q. And which engine did you stop first?

A. I don't remember.

Q. Was there any interval of time between stopping one engine and then the other?

A. About the same time.

Q. Will you give us your best recollection of the time that elapsed between the stopping of the

(Deposition of T. Yokota.)

engines, the first stopping of the engines, and setting them full astern?

A. Five seconds, I think.

Q. That setting of them astern, though, was on order from the captain, wasn't it? [567]

A. The stop signal was given about the same time that the captain gave his order and then I gave the signal and the full astern was given by the captain.

Q. When you say the full astern was given by the captain, was that an order or did the captain actually handle the telegraph?

A. I executed the order.

Q. Did you remain at the telegraph from then on?

A. No; I wasn't standing there all the time.

Q. After giving the full astern, the first full astern, how long did you remain by the telegraphs?

A. I don't think I stayed there at all.

Q. Do you remember where you went from the telegraphs?

A. I think I went to the port side.

Q. The port wing of the bridge?

A. Yes; the port side of the bridge.

Q. Outside of the wheel house?

A. Yes.

Q. And did the captain go there with you?

A. I think he went with me.

Q. Did anybody relieve you at the telegraph?

A. No; nobody.

(Deposition of T. Yokota.)

Q. Between the stop and full astern signals and the time of the collision was the apprentice officer making notations of those bells right at the time they were given?

A. Yes; he did. [568]

Q. So that as to the stop at 7:11 he wrote down on his paper immediately that that stop bell was given, is that right? A. He did.

Q. And the same would be true of the full astern notation at 7:13?

A. At that time I wasn't on the bridge.

Q. But you actually saw him make the notation or a note on his pad at 7:11, did you?

A. I saw him writing it or writing.

Q. At the time of the impact how deep into the side of the barge "Olympic II" did the bow of the "Sakito Maru" penetrate?

A. At that time everybody was excited, so I don't remember.

Q. At the time of the collision or at the time of the impact you were still on the port wing of the bridge, were you?

A. I think I was on the port side.

Q. Within half a minute after the collision, according to the log, the engines were then stopped, having been running full speed astern? [Then they were stopped at 7:11?

A. It says here half a minute but I didn't look at any watch.

Q. Do you know who executed on the telegraphs the stop at 7:11 or thereabouts? [569]

(Deposition of T. Yokota.)

A. I did.

Q. Then, after executing that maneuver, did you proceed immediately to the forecandle head?

A. Yes.

Q. That was on the instruction of the captain or on your own responsibility, which?

A. On the order of the captain.

Q. In order to get on the forecandle head, you had to go down to the main deck? Do you make that passage downstairs inside the house or outside the house?

A. There are two ways; inside and outside. At that time I took the outside.

Q. How many flights of steps did you have to go down to reach the main deck?

A. From where?

Q. From the bridge. A. Three.

Q. That is, the bridge is three decks above the main deck? A. Yes; three.

Q. And then you proceeded, when you reached the main deck, to the break of the forecandle head?

A. Yes.

Q. Did you go over the hatches or around them?

A. At the side of the hatches.

Q. Do you remember which side, port or starboard? [570] A. Starboard side.

Q. Then you have a little distance to climb from the main deck up onto the forecandle head, a little ladder there, have you not? A. Yes.

Q. How much time do you estimate that it took

(Deposition of T. Yokota.)

you to go from the bridge up onto the forecastle head? A. About a minute.

Q. When you got on top of the forecastle head, where did you go? Where did you go when you got on the forecastle head? Did you go to one side or the other, where you could look over?

A. I went right to the bow.

Q. Right to the very bow? A. Yes.

Q. Was the lookout still in his place on the platform? A. No; he was not.

Q. Do you know when he left his place?

A. Yes; I do.

Q. When did he leave it?

A. Just a little before the collision.

Q. And where did he go?

A. He went down to the main deck.

Q. About how long before the collision was that that he left that place?

A. I can't tell you very well; possibly around 10 [571] seconds.

Q. When you got to the bow I take it you looked down on the deck of the "Olympic II", down below? A. Yes; I did.

Q. Do you have an impression as to how deep at that time into the side of the "Olympic" the bow had penetrated?

A. No; I don't remember at that time. There was too much excitement.

Q. At that time, when you first looked over the bow, was the bow of the "Sakito Maru" still against or in the side of the "Olympic"?

(Deposition of T. Yokota.)

A. It was separated just a little bit.

Q. That is, so that the "Sakito Maru" was beyond the side of the "Olympic", that is, was the whole bow of the "Sakito Maru" away from the side of the "Olympic" or was it still partly in the hole?

A. I know it was separated a little bit but I don't remember whether it was separated from the side or not.

Q. Did you stay there and continue to watch whether the separation increased?

A. I don't think it separated more than that.

Q. More than when you first saw it?

A. Yes.

Q. Did you hear or feel or know when the engines were put astern again after the stop bell following the impact?

A. Just a little bit. I felt it a little bit. [572]

Q. That is, you could feel the jar of the ship as the engines started to move astern, is that right?

A. I don't remember that.

Q. Have you any impression now as to whether you noticed that the engines were going astern after or before you reached the forecandle head and looked over the side? A. After.

Q. After you looked over the side or looked over the bow? A. Yes; after.

Q. Going back to the moment when the lookout reported the ship ahead, at that time you could see the barge rather covered in the mist but practically dead ahead, is that correct?

(Deposition of T. Yokota.)

A. Yes; I saw it.

Q. And how was the "Sakito Maru" headed with reference to the barge, that is, toward her bow, toward her stern or toward her amidships?

A. I think about the middle.

Q. Do you remember how many masts the barge showed?

A. I don't remember.

Q. You couldn't tell us toward which mast of the barge the bow of the "Sakito Maru" seemed to point?

A. I cannot tell that.

Q. But apparently the "Sakito Maru" was approaching the barge just about at a right angle to her port side? [573]

A. The port side of the barge?

Q. Yes. Was it the port side or the starboard side she was approaching?

A. It was the port side.

Q. And approaching just about at a right angle?

A. Yes.

Q. And you think the distance was about 200 meters?

A. Yes.

Q. How soon after you first saw the barge would you say that the hard astarboard helm was executed on the "Sakito Maru"?

A. I think right away; as soon as I saw that there was no time at all.

Q. Which came first, the full astern on the engines or the hard astarboard on the wheel?

A. I have no recollection but I think it was about the same time.

(Deposition of T. Yokota.)

Q. Do you have on the ship any plot or diagram of her turning curve?

A. I don't think we have any.

Q. You don't think that any naval architect has ever plotted her turning curve or furnished the ship with any chart showing how she swings along a hard helm? A. No; they haven't got any.

Q. In your experience, would you say the "Sakito Maru" answers her helm about the same as any other modern ship of [574] about the same or a comparable type?

Mr. Adams: Just a minute. I object to the question upon the ground that no proper foundation is laid. There is no showing that the witness is familiar with all ships of modern design that Mr. Cluff has reference to. And I object to the question on the ground it is unintelligible.

Mr. Cluff: Maybe the witness understands it. Will you ask him if he understands the question?

A. Yes; I understand it.

Q. Will you answer it, please?

A. Yes. It answers to the helm about the same.

Q. Just normally, the way a vessel of like type would answer her helm?

Mr. Adams: The same objection.

(Short recess.)

A. Yes; in a natural way.

Q. By Mr. Cluff: How long after the hard astarboard helm did you first observe that she began to swing?

(Deposition of T. Yokota.)

A. Just a little before the collision.

Q. You first saw the barge about 200 meters away?

A. I think about 200 meters.

Q. Do you think it was possibly any more than 200 meters?

A. No; I think it was around 200 meters.

Q. Are you quite positive it wasn't as much as three or four hundred meters? [575]

A. No; it was not 300 or 400.

Q. You are quite definite it wasn't 300 meters?

A. No; it was not 300 meters.

Q. Now, how much of that 200 meters had the "Sakito Maru" covered before you noticed her begin to swing?

A. As I have already testified, just a little before the collision.

Q. At the time you noticed her begin to swing, was she as close as 50 meters to the side of the barge?

A. At that point I have no recollection.

Q. Did you first observe that she was beginning to swing within a minute after the hard astarboard helm?

A. I cannot give you the time.

Q. Then, you cannot testify now how far away the ship was or how long it was before the collision when you first saw her begin to swing?

A. I can't tell you that. I have no recollection.

Q. When the "Sakito Maru" finally struck the barge, how far to the right was the point of impact

(Deposition of T. Yokota.)

from the point where she was heading before the "Sakito Maru" began to swing?

A. I have already testified I have no recollection as to that.

Q. Does it seem to you that the point of impact on the side of the barge, the actual point of impact, was about the same place as the point toward which the bow of the "Sakito Maru" was heading when you first saw the barge? [576]

A. Yes; I think so.

Q. So, as far as you can tell, she didn't swing at all? She didn't swing to the right?

A. I think it swung a little bit.

Q. But so little that you can't give us any estimate of how much?

A. No; I have no recollection.

Q. Nor can you tell when the swing began?

A. No; I cannot.

Q. After you first saw the barge as you approached, as you said on your direct examination, you said you saw another small vessel?

A. I didn't see any at that time.

Q. When did you first see this small vessel?

A. After I went to the forecastle.

Q. That was after the collision that you first saw the small vessel? A. Yes.

Q. Up to the time of the collision did you see any other vessels of any kind in the vicinity except the barge? A. I didn't see any.

Q. After the collision did you see any other ves-

(Deposition of T. Yokota.)

sels besides the barge and the little vessel that was lying alongside of her?

A. After awhile the Coast Guard or something like that came there. [577]

Q. Didn't you see another barge, a masted barge, lying just beyond the "Olympic II" and just about in a line with the course of 340 true?

A. Not at that time.

Q. Subsequently you did see one, didn't you?

A. After awhile, I was able to see it.

Q. How many other barges did you see in the vicinity there? A. Another one.

Q. As a matter of fact, after the collision, didn't you see two barges besides the one that was sunk?

A. Only one.

Q. Do you know what the name of that other barge you saw was?

A. No; I have no recollection.

Q. If I suggested that her name was the "Pt. Loma", does that refresh your recollection?

A. No; I have no recollection.

Q. Are you sure that the barge that the "Sakito Maru" hit was the same barge as the one you saw when the lookout reported?

A. I think it was. It was the same shaped barge.

Q. Can you be absolutely positive that the barge that you hit was the same barge that you saw when the lookout first reported a ship ahead?

A. I only think that. [578]

Q. What is it that makes any doubt in your mind?

(Deposition of T. Yokota.)

A. Because I haven't made a sketch of it or taken a photo of it.

Q. From the time the lookout first reported until the collision did you take your eyes off of the barge ahead for more than a second or two at a time?

A. I did not continue looking at it.

Q. How much time do you think elapsed or for how long a time did you not look at the barge?

A. I watched the barge right from the beginning that the report was given until the collision.

Q. Do you think it is possible that the first barge the lookout saw was the "Pt. Loma" and that the turn to the right avoided that barge entirely?

A. No; positively not.

Q. That is quite impossible?

A. I am positive.

Q. You say you think it took about three minutes from 7:03 to decelerate the speed from her normal 16 knots to about 6½ knots? Did I understand you correctly?

A. I think it took about three minutes.

Q. Have you ever made any experiments or tests with the ship or taken any readings or bearings to ascertain how long it takes for her to slow down to 6½ knots when you go from full speed ahead to slow ahead? A. No; I have not. [579]

Q. Were you able to see the land on the starboard side as you approached the "Olympic"?

A. No; you couldn't see it.

Q. And by that time could you see Catalina on the port side?

(Deposition of T. Yokota.)

A. I didn't look back of me.

Q. So on either side and ahead you could see no land at all from 7:03 on?

Mr. Adams: I object to that question upon the ground that is not what the witness testified to. He said he didn't look back on the port side.

Mr. Cluff: I didn't ask him that. Read the question.

(Question read by reporter.)

Mr. Cluff: He said he didn't look back and I asked him if he could see on either side or ahead.

Mr. Adams: I object to the question as partly already asked and answered.

Mr. Cluff: Let's have an answer to the part he hasn't answered.

Mr. Adams: If you confine your question to that, I have no objection.

Q. By Mr. Cluff: I will get at it in this way. From 7:03 on you were on the outside of the bridge and you were keeping some lookout yourself?

A. Yes.

Q. You were keeping that lookout pretty steadily from [580] 7:03 on until the lookout reported the barge ahead? A. Yes.

Q. You were keeping watch straight ahead?

A. Yes; on either side and ahead.

Q. Either side and ahead? On the starboard side as far as your beam, anyhow? A. Yes.

Q. Could you see any land in any of the directions in which you looked at any time from 7:03 on to the point of collision?

(Deposition of T. Yokota.)

A. I couldn't see anything.

Q. At any time during your watch did you pass or were you passed by any other steamer proceeding in the same direction as the "Sakito Maru"?

A. No; I didn't see any.

Q. At any time during the whole watch, that is, from the time you took the bridge until the collision, there were no other steamers that came in sight of the "Sakito Maru", is that right?

A. I didn't see any.

Q. Did you hear the whistles of any other vessels?

A. I did not.

Q. At any time? A. Not at any time.

Q. And you heard no bells until after you had sighted the barge? [581]

A. I did not.

Q. And after you sighted the barge, you did hear the continuous ringing of the ship's bell?

A. No; when I first saw it, I did not hear it.

Q. How long after you first saw it did you first hear the ringing of this bell?

A. I haven't got a definite recollection but about half a minute, I think.

Q. About half a minute after you first saw her?

A. I think about half a minute.

Q. And did the sound of that bell seem to come from the barge?

A. I think so.

Q. As you approached the barge, could you see any man on board ringing the bell?

A. I did not see any.

Q. Did you see any bell?

A. No; I did not.

(Deposition of T. Yokota.)

pin to an object I have in view. Have you got a piece of paper?

Q. Yes.

A. The shadow pin is right there in the center and then from there is zero to 360 or whatever the degrees are. The observer stands right there and looks at the shadow pin. [583] And here, we will say, is the Island of Santa Catalina and the point there is brought in a straight line with the shadow pin and at the same time I read the degrees on the face.

Q. The degrees on the face of the compass?

A. Yes.

Q. And then, having taken that reading, how do you determine the position of that ship?

A. Then I find that on the chart.

Q. By projecting the line of the compass bearing from the object which you see? A. Yes.

Q. You project that line until it intersects the line of the course and that gives you the ship's approximate position, is that right?

A. That is the ship's course there and by taking just one bearing you can't tell whether the ship is there or this other point but, if there are two objects, that quotient indicates the ship's position where the line crosses.

Q. A 1-point bearing is simply a line from the object where it intersects the projected course of the ship, is that right?

A. I can't tell you that. You have to take two points to determine the position of the ship.

(Deposition of T. Yokota.)

Q. So the 1-point bearing which you take won't determine the position of the ship but simply the position of the object? [584]

A. Yes; that is right. You have to take two points to determine the position of the ship.

Q. When you take two points, that means you have a bearing line from each point and where those bearing lines intersect at the point of observation fixes the position of your ship, is that right?

A. That is right.

Q. Getting back to the time of the collision again, from 7:03 on you were keeping lookout, as you have testified, both forward and on both sides of the bow?

A. Do you mean after 7:03?

Q. After 7:03.

A. I didn't see anything excepting the barge after 7:03.

Q. No. I say after 7:03 you were keeping lookout on the wing of the bridge and looking both dead ahead and on both sides of the bow?

A. After 7:03?

Q. Yes. A. No; only forward.

Q. And you were keeping lookout forward, of course, to see if there was going to be any vessel ahead of you in the fog, is that right?

A. You will have to repeat that question again.

Q. Let's see if I can rephrase it. I say what you were doing at the time was keeping a lookout for other vessels? [585]

A. Yes.

Q. And the fog was getting denser?

A. Do you mean after 7:03?

(Deposition of T. Yokota.)

Q. After 7:03. A. Gradually; yes.

Q. So that the visibility ahead decreased from about two miles to five or six hundred meters, is that right? A. Yes.

Q. And, of course, as the visibility got worse, you were taking more care to keep a lookout?

A. Just a minute. No. As I have already testified, I made a mistake. At 7:03 I looked forward and on both sides.

Q. The purpose of that was to watch for other vessels that might be in the way of the "Sakito Maru"? A. Yes.

Q. And you were watching very carefully as this fog got heavier? A. Yes.

Q. So, now, when the visibility lessened, it finally got so that when the lookout reported this ship ahead that visibility was down to five or six hundred meters?

A. Until I was able to see, I think that was about the distance.

Q. And the captain was also keeping lookout there somewhere on the bridge itself?

A. Yes. [586]

Mr. Adams: I would like to have the previous question and answer read.

(Record read by reporter.)

A. Will you repeat that answer?

(Answer read by reporter.)

A. Before I was able to see the barge, I think I could see at a distance of about 500 or 600 meters.

(Deposition of T. Yokota.)

Q. By Mr. Cluff: And the apprentice officer inside of the wheel house, in such time as he had free from his other duties, was also keeping lookout, was he?

A. Yes; when he wasn't occupied, he was also a lookout.

Q. And then the sailor all this time was on the forecastle head?

A. Yes; standing there right along.

Q. Mr. Yokota, will you explain how it was that you didn't see that barge when you were five or six hundred meters away?

Mr. Adams: I want that question read, please.

(Question read by reporter.)

A. When I said that I could see 500 or 600 meters ahead of me, I made a mistake because I couldn't see that far.

Q. By Mr. Cluff: Then, you want now to change your testimony about the visibility being five or six hundred meters at the time the lookout reported the barge ahead?

A. No; I won't change it.

Q. You still think that is what the visibility was? [587]

Mr. Adams: I object to that question upon the ground that is not what the witness testified to. He said that before he was able to see the barge he believed that he could see 500 to 600 meters.

Q. By Mr. Cluff: After you saw the barge, do you have any reason to change that estimate now?

(Deposition of T. Yokota.)

A. When I saw the barge, it appeared to me it was very close.

Q. Is it still your testimony that when you first saw the barge it was not more than 200 meters away?

A. Yes, because in my opinion, it was very close. It seemed to be very close.

Q. And is it still your testimony that at the time the barge was reported, in your opinion, the visibility was five or six hundred meters?

Mr. Adams: I object to that question upon the ground that is not yet what the witness testified to.

Mr. Cluff: I will submit it and stand on the record and I will ask that the question be answered.

A. My testimony is just before that I think I was able to see that distance.

Q. Just before that?

A. That is only my belief.

Q. Now, is it your testimony that the fog suddenly thickened in the few seconds just before the lookout reported? [588]

A. Possibly it was so.

Q. Possibly that happened but did you see at the time any sudden thickening of the fog?

A. No; at that time I couldn't tell.

Q. This 200-meter figure is simply your best estimate, based on your experience, and it might have been considerably more?

Mr. Adams: I object to that as already asked and answered several times.

(Deposition of T. Yokota.)

Mr. Cluff: I will press for an answer.

Mr. Adams: I will instruct the witness not to answer the question.

Mr. Cluff: I will ask the notary to instruct him to answer the question.

The Notary: You are advised to answer the question. A. I refuse to answer.

(By agreement of all counsel present, a recess was taken, at the hour of 6:10 p. m. until the hour of 7 o'clock p. m. of the same date.) [589]

Wednesday, June 4, 1941

7 o'clock p.m.

(Pursuant to agreement, the taking of the depositions of the witnesses hereinbefore named was resumed, with the same parties present.)

Q. By Mr. Cluff: Mr. Yokota, except for the smooth log there which you have before you, these little memorandum slips are the only original entries that you keep on the bridge?

A. That is all.

Q. That is, the apprentice officer on watch keeps a little memorandum slip during his watch like Yokota Exhibit No. 2? A. Yes.

Q. And then, when the watch is over, the smooth log is made up by the officer and the apprentice from this memorandum and from their memory of any-

(Deposition of T. Yokota.)

thing that is not included in there? A. Yes.

Q. One of the gentlemen here is interested in this entry in the smooth log Exhibit No. 3, where, under the entry "7:19", there is a little dotted line around the figure "7:19". Will you explain what that means?

A. That is two separate navigating hours, the hours under way and the hours at anchor.

Q. Just one other question about the chart Exhibit No. 1, the chart on which your courses were plotted. That was [590] the chart that you were using as a navigating chart in the hours of your watch prior to the collision, is that right?

A. Do you mean this chart here?

Q. Yes. A. Yes.

Q. Will you state for the record when the course of 340 true was laid down and the westerly correction made when you had the light abeam? When were those lines made with reference to the collision?

A. Do you mean when this line was put in there?

Q. Yes. First, when the main line and then when the corrected line were put in.

A. The line is put there when the bearing is taken.

Q. As to the first line, you simply laid down your course from your last departure at Coronado? You made that on the chart? A. Yes.

Q. That was before the collision?

A. Surely.

Q. And then, after you took the beam bearing

(Deposition of T. Yokota.)

here, the second line to the left is the correction of your course on account of the adjustment of dead reckoning from the bearing? A. Yes.

Q. And that corrected line was put on the chart before the collision? [591] A. Surely.

Q. That was right after you took the beam bearing there?

A. No. I drew it from that point there.

Q. Indicating the beginning of the line?

A. Yes.

Q. As to the various bearing marks which you have identified, as you testified, you used this chart as a working chart and these are your actual locations on the chart at the time your bearings were taken?

A. Yes.

Mr. Cluff: I have no further questions.

Mr. Black: Shall I proceed with my few questions?

Mr. Adams: Yes.

Q. By Mr. Black: Mr. Yokota, I think you stated that at 7:03 you received instructions to ring up stand by and then slow ahead on the telegraphs?

A. Yes; I did.

Q. And that you also blew a fog whistle at that time pursuant to the captain's orders?

A. Yes.

Q. Which did you do first? Did you ring up on the telegraph or did you start blowing the air whistle first?

A. I have no recollection which I did first.

(Deposition of T. Yokota.)

Q. How long an interval was there between the stand by and the slow bell?

A. I don't think there was any time elapsed at all; [592] possibly around 10 seconds.

Q. Did you wait for a reply to the stand by bell before you rang slow ahead?

A. We get a reply in about a second or two seconds right after we give the signal.

Q. My question was did you get your reply from the engine-room to your stand by bell before you rang up slow?

A. I don't remember such details.

Q. What is your usual practice? Is it not the fact that you usually await a reply from the engine-room on one signal before you attempt to give another signal?

A. That is the usual method.

Q. And there was no emergency at that time that would require any different practice to your knowledge, was there?

A. Yes; there was no emergency.

Q. So that the probabilities are that you got your answer from the engine-room to the stand-by signal before you rang up slow?

A. That I don't remember.

Q. Can you tell me how long a period of time there was between the report of the lookout that there was a ship ahead and the time that you first saw the barge yourself?

A. Very slight; about five seconds.

(Deposition of T. Yokota.)

Q. And, when you saw the barge, you state it was at a distance of what you believe was 200 meters? A. Yes. [593]

Q. Does that mean 200 meters from the bridge where you were standing or an estimated 200 meters from the stem of your vessel?

A. From the place I was standing on the bridge.

Q. And I think you testified that the distance from the bridge to the stem of your vessel was 65 meters? A. About that.

Q. So that that would mean that the barge was approximately 135 meters away from your ship, from the farthest point forward of your ship, when you first saw it? A. About that; yes.

Q. How long a period took place from the time that you saw the barge until you rang up stop on the telegraphs?

A. I don't think there was any time at all.

Q. Just the length of time it took you to run from the wing of the bridge to the port side where the telegraphs are, is that right?

A. About a second or two.

Q. Did you get an answer to the stop bell before you rang up full astern?

A. That I don't remember.

Q. How long a period was there between the time you rang stop until the captain told you to ring full astern?

A. About five seconds, I think.

Q. Referring to the ship's gyro record, Mr. Yo-

(Deposition of T. Yokota.)

kota, which is Exhibit No. 15, I think you have already testified [594] that the large numbers on the right-hand side of the page are intended to indicate the clock time of the various headings of the ship?

A. Yes.

Q. You also testified that at 2 o'clock in the morning of September 4th the clocks were retarded 15 minutes? A. Yes.

Q. What method do you use on your vessel to synchronize the gyro course recorder with the ship's time?

A. When we correct the time, we compare it with the record of the gyro.

Q. Is it not the fact that it is necessary to turn back the roll in some way when you retard the clocks to make it coincide with the time shown on the course recorder? A. Yes.

Q. Is that done manually by simply releasing the roll and turning it back so that the two pens coincide with the clock time?

A. Yes; roll it back with the hand.

Q. I notice on this exhibit that about opposite the line "2 o'clock" we see a heavier ink line which looks as if the course was run over twice, which might have resulted from the operation of rolling the paper back to coincide with the clock of the ship. Is that the correct deduction from that?

A. Yes; it got double at that time. [595]

Q. And that is because you rolled the recorder back to coincide with the recording of the clocks?

A. Yes.

(Deposition of T. Yokota.)

Q. And, when you advance the time, you must, necessarily, in the same way, roll the machine the other way? A. Yes.

Q. That, of course, cannot be done accurately to the second in a device with only a quarter of an inch to show 10 minutes? You have to estimate it to some extent, is that not correct?

A. Yes; it must be estimated.

Q. So that you cannot depend on the course recorder being right to the second in line with the ship's clocks?

A. No; you cannot adjust it right to the second.

Q. But the elapsed time between the horizontal lines indicating 10 minutes is a uniform rate that depends on the maximum of the course recorder itself, is that not correct?

A. Will you repeat that question?

Q. Perhaps I can make it simpler. The speed of this paper through the machine depends on the clock work in the machine itself?

A. Yes; that is correct.

Q. So that it does represent very accurately the length of time the vessel is on a particular course?

A. Yes.

Q. Although the correspondence to the ship's time may [596] not be exact?

A. No; you cannot adjust it to the second.

Q. Do you recall when the helmsman gave a hard right rudder, at or shortly after 7:09, whether he kept that right rudder until the time of the collision? A. Yes; he did.

(Deposition of T. Yokota.)

Q. You are sure of that? A. Positive.

Q. So that the vessel under those circumstances could not possibly have swung to the left at any time before the collision? A. No; it could not.

Q. So that the collision must, necessarily, therefore, have occurred between the time the vessel started to swing to the right, as shown by the gyro compass, and the time when the vessel reached a heading of 350, as shown by this exhibit?

A. I think it was about that time.

Q. In other words, the vessel could not possibly have reversed that swing and started to swing to the left before the collision occurred?

A. No; it could not.

Q. So that you can't say definitely, from the basis of this course recorder, that the collision must have occurred between the time the vessel left her heading of 340 and some time until she reached her maximum right swing of 350? [597]

A. Do you mean when the ship swung to the right between 340 and 350 degrees, that that is when the collision occurred?

Q. Either at the beginning or at the end or somewhere in the middle. A. Yes; I can say that.

Q. What method do you have on your vessel for making the engine-room and the bridge time correspond?

A. When we correct the time of the clock say at 2 o'clock, all clocks are set to that time on the ship.

(Deposition of T. Yokota.)

Q. The officer on watch, I take it, signals to the engine-room and gets the clocks in order?

A. No; the quartermaster adjusts his clock and then goes around and adjusts all of the clocks.

Q. Including the engine-room clocks?

A. Yes.

Q. Whose duty is it to adjust the course recorder to the change in time?

A. The officer on watch.

Q. What officer was it that stood the midnight to 4 a. m. watch? A. The second officer.

Mr. Black: That is all.

Mr. Clough: That is all. No further questions.

Q. By Mr. Eastham: Mr. Yokota, calling your attention to this Exhibit No. 1, when did you get that? [598] A. Do you mean when?

Q. When; yes.

A. What do you mean by when did I get it?

Q. What day, month and year.

Mr. Adams: Do you mean, Mr. Eastman, what time they bought the chart?

Mr. Eastham: Yes; when did they get it on board the ship? A. When it was new?

Q. Yes. A. That I don't know.

Q. You don't know whether that is the last chart put out by the Coast and Geodetic Survey, do you?

A. That I don't know. There is no date on here.

Mr. Adams: There is this date here. Let the record show that there is a rubber stamped date on the chart, August 21, 1931.

(Deposition of T. Yokota.)

Q. By Mr. Eastham: Who put that date on there, do you know?

A. I don't know. I think it was the second officer.

Q. Don't you know that there was a later chart, for the same area, obtainable from the Coast and Geodetic Survey? A. I don't know.

Q. Do you know if your company tries to supply your ships with the latest charts of this kind?

A. Yes. [599]

Q. But you don't know if that is the latest chart of that area, do you?

A. That is the duty of the second officer.

Mr. Eastham: I think that is all.

Mr. Cluff: Before you resume the redirect examination, I want to ask some more questions.

Q. Mr. Yokota, how long have you been running in Pacific Coast waters, running into the port of Los Angeles?

A. Before that I made one voyage.

Q. Was the previous voyage you made your first voyage into the port of Los Angeles?

A. Quite previous to that I came here once.

Q. And did you come up on that trip on the "Sakito Maru"? Was that the previous trip of the "Sakito Maru"? A. No.

Q. What vessel was it?

A. The "Tatsuno Maru", about nine years ago.

Q. But this trip on September 4th as you approached Los Angeles was the first time you had approached these waters for nine years?

(Deposition of T. Yokota.)

A. No. I came once again on another voyage before that.

Q. When was that second voyage that you came?

A. That is the voyage before the collision.

Q. And that was on the "Sakito Maru"?

A. Yes. [600]

Q. Was the previous voyage of the "Sakito Maru" from Japan to New York and return via the Canal?

A. Do you mean the time of the "Tatsuno Maru"?

Q. No. I am talking about the previous voyage of the "Sakito Maru".

A. It was the same voyage.

Q. It was the voyage to New York on which you were returning at the time of the collision?

A. Surely.

Q. Before that eastbound voyage, what had been the voyage of the "Sakito Maru"?

A. It was New York.

Q. She made one previous round voyage to the Orient before this one, is that correct?

A. It was the same course.

Q. I am trying to get the number of voyages that you had made from the Orient to New York on the "Sakito Maru" before the collision.

A. What do you mean by the same?

Q. You joined the ship in December, 1939?

A. Yes.

Q. What was the first voyage you made from Japan and back there?

(Deposition of T. Yokota.)

A. To New York and back.

Q. By Los Angeles? A. Yes. [601]

Q. Did you call at Los Angeles both ways, both going to New York and coming back?

A. Yes.

Q. Now, can you fix the dates of the calls at Los Angeles on that first voyage beginning in January, 1940?

A. That I don't remember. I think it was about the end of February or the beginning of March.

Q. That would be going which way, east or west?

A. To New York.

Q. Going to New York? A. Yes.

Q. And you came back and called at Los Angeles, going back to the Orient? A. Yes.

Q. And can you fix the month of the call at Los Angeles when you were coming back?

A. I don't remember that date.

Q. Can you fix the date of your arrival back in Japan on the first voyage of the "Sakito Maru"?

A. I don't remember.

Q. Was the voyage on which the collision occurred the second round voyage that the "Sakito Maru" made or the third or fourth round voyage?

A. The second.

Q. So you had been in Los Angeles on the "Sakito Maru" three times prior to September 4, 1940? [602] A. Yes.

Q. You called at Los Angeles eastbound, on the eastbound passage of the ship, and can you fix that date? A. I don't remember.

(Deposition of T. Yokota.)

Q. Can you refresh your recollection from the log? A. It is not in this log.

Mr. Adams: Let the record show, Mr. Cluff, this log begins with July 27, 1940, from Cristobal to New York.

Q. By Mr. Cluff: It is probable, is it not, Mr. Yokota, that, if you were in Cristobal or shortly out of Cristobal on July 27th, the ship was in Los Angeles some time around July 1st to 10th?

A. Yes.

Q. With that date before you, it must have been that you were in Los Angeles, on the way down to Cristobal, some time around the 1st of July, isn't that right?

A. I think it would be around July 15th.

Q. Do you remember what time of day you left Los Angeles southbound on that passage to New York?

A. I just told you I think it was around July 15th.

Q. But I asked you what time of day. Did it leave in the morning or at night?

A. That I don't remember.

Q. Do you remember on any occasion, when you have been in the port of Los Angeles before, of seeing fishing vessels anchored at about the point that this collision took place? [603]

A. I didn't know that.

Q. You make the same course on each voyage, that is, practically you start out on the reverse of

(Deposition of T. Yokota.)

340 going south and come up about on 340 from the Coronado Islands coming north? A. Yes.

Q. The same course both ways? A. Yes.

Q. Do you know if any other officers of the ship had frequently run in and out of the port of Los Angeles? A. I don't know.

Mr. Cluff: That is all.

Q. By Mr. Montgomery: Do you know where the master, who was in charge of the "Sakito Maru" on the date of the collision, is today?

A. When I left Japan, I think he was on the "Bengal Maru".

Q. Has he ever put in at Los Angeles Harbor?

A. Not that ship.

Q. Do you know whether he had ever been in command of a vessel coming into Los Angeles Harbor before the date of the collision?

A. That I don't know.

Q. Had he been with you on the previous voyage when you had been to Los Angeles?

A. No. [604]

Mr. Montgomery: That is all.

Mr. Adams: Are there any further questions on cross-examination?

Mr. Clough: That is all.

Redirect Examination

Q. By Mr. Adams: Mr. Yokota, on the day that the "Sakito Maru" left Los Angeles Harbor east-bound for New York in July, you do not recall, do you, the exact time of departure from Los Angeles Harbor? A. No; I don't remember.

(Deposition of T. Yokota.)

Q. Do you remember whether it was in the daytime or nighttime?

A. No; I have no recollection.

Q. Do you know whether, after the breakwater light was passed, you were on watch or not?

A. I have no recollection at this time.

Q. Do you know whether or not you might have been in bed asleep? A. Possibly so.

Q. Do you recall having seen any fishing barges anchored in the vicinity where the "Olympic II" was at any time on any of your prior calls at Los Angeles Harbor?

A. I don't think I saw it on the previous voyages nor did I pay any attention to it or notice it.

Q. Referring to Yokota's Exhibit No. 15, which is the [605] record of the course recorder, and directing your attention to the question asked you by Mr. Black concerning the significance of this line running from course 340 over to course 350 at about 7:10 a. m., this line, Mr. Yokota, which we have just mentioned only shows the change in heading of the vessel as that change was being made, is that correct? A. That is correct.

Q. When this line leaves course 340, it is only when the hard astarboard rudder begins to take effect, isn't that correct? A. Yes.

Q. It does not mark the time, necessarily, when the helmsman put the wheel hard over, does it?

A. No; it doesn't.

Q. Do you know how long it takes after the

(Deposition of T. Yokota.)

wheel is put hard over before the rudder takes effect and the vessel starts swinging?

A. That depends on the speed of the ship.

Q. It depends upon the speed of the ship?

A. Yes.

Q. When the speed of the ship is slow ahead, the effect of a hard right rudder is felt a longer time or felt slower than when the vessel is going at a faster speed, isn't that correct?

Mr. Black: That is objected to as leading.

Mr. Adams: I will withdraw the question. [606]

Q. When is the effect of a hard right rudder felt most? Is it when the vessel is proceeding slow ahead or when the vessel is proceeding full speed ahead?

A. The faster the speed the faster the rudder answers.

Q. Mr. Yokota, I believe you testified that after the barge was sighted you ran into the wheel house and put your hands on the telegraph handles and gave a signal on the telegraphs to stop the engines?

A. Yes.

Q. Before you executed that order on the telegraphs, did the captain give any order?

A. I think it was about the same time.

Q. And what order did the captain give at the same time? A. Stop.

Q. And did he then give another order immediately thereafter?

A. Yes; right away after that.

Q. And what was that order?

(Deposition of T. Yokota.)

A. Full astern.

Q. In answering the questions put to you about the distance that the barge was from the place where you were standing when you first saw the barge, is that simply an estimate made by you as of that time? A. That is only my estimate.

Q. How long did you continue to look at the barge after the lookout called and you raised your head and saw the [607] barge yourself? I will withdraw that question. How long did you continue to watch the barge after you first sighted the barge?

A. Right up to the collision.

Q. How long did you continue to watch the barge, after you first sighted her, before you went into the wheel house and worked the telegraphs?

A. I don't think there was any time elapsed at all; about one or two seconds.

Q. Was it during that period that you formed the estimate as to how far distant the barge was?

A. Yes.

Q. Before you saw the barge, how far ahead did you believe you could see from the bridge?

A. Before that, it was my belief that I could see about 500 meters.

Q. It was your belief at that time, before you saw the barge, is that correct? A. Yes.

Q. After you saw the barge, which, as I understand it, you estimate was 200 meters away at the time you saw it, did you believe that your former belief was inaccurate?

(Deposition of T. Yokota.)

A. It was either my mistake or the suddenness of the fog coming in or the suddenness of the fog around the barge.

Q. In other words, either you had thought the [608] visibility was farther than it was or the visibility was that far but the fog suddenly came in around the barge and reduced the visibility, is that correct?

A. That I don't know. As I have already testified, it was either my mistake or it was on account of the fog.

Q. When you say it was on account of the fog what do you mean by "on account of the fog"?

A. Well, we were running forward. The fog was very light. Possibly it was thick around the barge or possibly my figuring was wrong.

Q. Referring you to Yokota's Exhibit No. 3 for identification, opposite the printed words "Chief Officer" on that exhibit there is a signature. Whose signature is that?

A. That is my signature.

Q. When did you sign that?

A. After the log book was made up.

Q. Did you examine the entries on the log book before you signed it? A. Yes.

Q. Mr. Yokota, after the engines were put full astern at 7:09, was there any signal sounded on the whistle to indicate that the engines were going astern?

A. The captain gave the order to the apprentice officer.

(Deposition of T. Yokota.)

Q. And what order did he give the apprentice officer? A. To blow the whistle three times.

Q. Did the apprentice officer do so? [609]

A. Yes.

Q. Do you recall hearing three blasts on the whistle at that time? A. Yes.

Q. As I understand your testimony, after you first sighted the barge, you continued to watch the barge up until the time of the collision?

A. Yes.

Q. Was the barge that you first sighted the barge that the "Sakito Maru" struck?

A. There is no mistake. It is the same.

Q. Are you positive about that?

A. Positive.

Q. Did Mr. Shimada work a watch during the daytime? A. What watch do you mean?

Q. I will withdraw that question. What were the hours of work of Mr. Shimada on September 4, 1940?

A. The usual cleaning up of the houses.

Q. What were the hours of work?

A. 6:30 a. m.

Q. And how long did he work?

A. Until the fog set in.

Q. What were his regular hours of work?

A. From 6:30 to 8 a. m. and from 9 to 12 and from 1 to 4 p. m.

Q. Was he a member of the deck crew? [610]

A. Yes.

(Deposition of T. Yokota.)

Q. Do they stand watches? A. Yes.

Q. Do they stand watches during the daytime?

A. Do you mean as a lookout?

Q. During their regular work.

A. Yes; they do.

Mr. Adams: No further questions.

Recross-Examination

Q. By Mr. Black: Just one more question. Do you know whether the barge sank before or after you dropped your anchor?

A. It was after that it sunk.

Q. In other words, it sank after you dropped your anchor? A. No.

Q. I am not sure just what the answer is now. The barge sank before your ship dropped the anchor, is that it? A. Yes.

Q. Have you ever made any tests on your ship to determine how long it takes your vessel to come to a full stop in the water after ringing full speed astern, starting with slow ahead?

A. I have never made a test.

Mr. Black: That is all. [611]

Redirect Examination

Q. By Mr. Adams: Mr. Yokota, based upon your experience aboard the "Sakito Maru", within what distance do you believe the "Sakito Maru" can be brought to a stop by putting the engines full astern from slow ahead?

A. About 300 meters at slow.

(Deposition of T. Yokota.)

Q. When you say at slow do you mean starting from slow ahead?

A. Yes; when it is running slow ahead and full astern.

Q. Mr. Yokota, about how far distant was the bow of the "Sakito Maru" from the place where the barge was at the time the "Sakito Maru" came to anchor? A. About 100 meters, I think.

Q. In other words, the "Sakito Maru" anchored about 100 meters away from the barge?

A. I think so; about that.

Mr. Adams: No further questions.

Recross-Examination

Q. By Mr. Eastham: How long did the barge remain afloat after the "Sakito Maru" struck her?

A. About two or three minutes.

Q. The "Sakito Maru" cut a hole in the barge, did she not? A. Yes.

Q. And the "Sakito Maru" was then backed away from the [612] "Olympic" immediately, was she not? A. Not right away.

Q. How long an interval elapsed between striking the barge and backing away from it?

A. It didn't back up very much.

Q. Why didn't you keep the "Sakito Maru" in the hole in the "Olympic"?

A. Because it separated right after that.

Q. You could have put the "Sakito Maru" back in the hole before the barge sank, couldn't you, and have kept her afloat?

(Deposition of T. Yokota.)

A. No. I think it is rather difficult once it separates.

Q. Did you form any estimate of the number of people that were on the barge at the time of the collision?

A. The ones that I saw, about two or three.

Q. I believe you have already testified that the "Sakito Maru's" boats did not rescue any of the survivors from the barge, have you not?

A. No; they did not rescue any.

Q. And you didn't recover any of the bodies of the persons that were drowned?

A. No; we did not.

Q. Did you see any of the people that were on the barge rescued by any other boats?

A. There was a motorboat on the other side of the [613] barge.

Q. Did you see that motorboat rescue any of the passengers on the barge?

A. It looked as though they were.

Q. How many did you see the motorboat rescue?

A. I could not see on account of the barge.

Q. Did you see any of the people that were on the barge drown? A. I did not.

Q. I believe you testified that the deck of the "Sakito Maru" was about 52 or 53 feet above water, is that right?

Mr. Adams: That was the bridge, Mr. Eastham.

A. Yes.

(Deposition of T. Yokota.)

Q. By Mr. Eastham: How far was the deck bow of the "Sakito Maru" above the barge at the time of the collision?

Mr. Adams: Do you mean the top of the bow? Do you mean in the forecastle head?

Mr. Eastham: Yes.

A. Do you mean the deck of the barge?

Q. How far was the bow deck of the forecastle head of the "Sakito Maru" above water?

A. About 30 feet, I think.

Q. How high was the "Olympic II" out of the water at that time, if you know?

A. I don't know. [614]

Q. You didn't form any estimate?

A. I did not.

Q. You could see clear over the "Olympic", could you not? A. Yes; I could.

Q. I believe you have already testified you didn't see any other barge anchored in that vicinity at that time? A. Not at that time.

Q. Well, did you at any time?

A. After we anchored; a little while after that.

Q. What did you see after you anchored?

A. I saw a barge similar to the "Olympic II".

Q. How far was she away?

A. I have no positive recollection.

Mr. Eastham: That is all.

Redirect Examination

Q. By Mr. Adams: Mr. Yokota, after the impact the bow of the "Sakito Maru" separated from the barge before the engines were put full astern,

(Deposition of T. Yokota.)

did it not? I will withdraw that question. After the impact the engines were stopped, were they not?

A. Yes.

Q. Before the engines were put full astern again, had the bow of the "Sakito Maru" separated from the barge?

A. Yes; at that time it had already separated. [615]

Q. What, in your opinion, might have happened if the engines had been put ahead instead of put astern at that time, not necessarily full ahead but put ahead?

A. I thought it would be dangerous.

Q. Why?

A. Because the "Olympic" was very small and our ship is very heavy and it was drawing a low draft and possibly, if we had done that, it might have turned the barge over and possibly we might have made another hole in some other spot.

Mr. Adams: No further questions.

Recross-Examination

Q. By Mr. Eastham: The barge turned over, didn't it? A. No.

Q. You say the barge did not turn over?

A. No; it did not.

Mr. Eastham: That is all.

Mr. Adams: Has anybody anything else to ask?

Q. By Mr. Cluff: Do you know at the time of the impact how far the force of the "Sakito Maru" drove the barge ahead of it?

(Deposition of T. Yokota.)

A. I don't know about that.

Q. Isn't it a fact that the force of the impact drove the barge sideways through the water about 100 feet or more? A. I don't think that much.

Q. How much do you think it did? [616]

A. I think 100 feet is too much.

Q. Well, how much do you think, how many feet? A. Between 50 and 100 feet.

Mr. Cluff: That is all. [617]

G. KATO,

a witness on behalf of Respondent-Claimant-Petitioner and Cross-libelant Nippon Yusen Kabushiki Kaisya, being first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Adams: Mr. Kato, will you state your full name? A. Genkichi Kato.

Q. Mr. Kato, you are the chief engineer of the "Sakito Maru", are you not? A. Yes.

Q. And you were the chief engineer of that vessel on September 4, 1940? A. Yes.

Q. When did you join the "Sakito Maru" as chief engineer? A. In May, 1940.

Q. What training did you have for your position as engineer aboard vessels?

A. The Marine School in Tokyo.

Q. Is that the Tokyo Nautical School?

A. Yes; it is.

(Deposition of G. Kato.)

Q. Did you attend the engineering department of that school? A. Yes. [618]

Q. For how long? A. For five years.

Q. How long have you held a chief engineer's license? A. Since 1920.

Q. When did you graduate from that school?

A. The Taisho year 4; 1915.

Q. After your graduation in 1915, have you continuously served in the engine-room aboard vessels?

A. Yes.

Q. The "Sakito Maru" has two screws, has she not? A. Yes.

Q. And she is powered by two Mitsubishi Diesel engines? A. Yes.

Q. These engines are 2-cycle single acting?

A. Yes.

Q. And they have direct connection with the shaft? A. Yes.

Q. They each have seven cylinders?

A. Yes.

Q. What is the diameter of the cylinders? Do you recall? A. 720 millimeters.

Q. What is the stroke?

A. 1,250 millimeters.

Q. What is the type of fuel injection?

A. Solid induction. [619]

Q. Is that airless? A. Yes.

Q. What is the horse-power with full load capacity? A. One set is 4,800.

Q. Which set is 4,800?

A. Together they figure 9,600.

(Deposition of G. Kato.)

Q. As chief engineer, do you stand watches aboard the vessel? A. No; I have none.

Q. You were not standing any on September 4, 1940, were you?

A. Yes; I entered the morning watch.

Q. Were you standing watches during that day?

A. I go as I please at any hour for inspection.

Q. What time did you first go to the engine-room of the "Sakito Maru" on September 4, 1940?

A. 6:55 a. m.

Q. Did you remain in the engine-room from that time until after the collision? A. I did.

Q. What engineer was on watch at that time?

A. The first engineer.

Q. Who else was on watch at that time?

A. The third engineer and apprentice.

Q. Were there any oilers?

A. Three oilers. [620]

Q. Were you in the engine-room when stand by and slow ahead were rung on the ship's telegraph at 7:03? A. I was.

Q. What system do you follow aboard the "Sakito Maru" in the engine-room for making a record of the signals that you receive from the bridge on the ship's telegraph?

A. Will you repeat that question, please?

(Question read by reporter.)

A. We insert that in the signal book right away.

Q. Do you know who made the entry for the signal received at 7:03? A. I do.

(Deposition of G. Kato.)

Q. Who did?

A. The third engineer by the name of Terashima.

Q. Did you see the telegraphs at the time that signal was received? A. I did.

Q. Did you note the time from the clock at that time yourself?

A. The clock is right in front of us and anybody, by looking at the clock, can tell.

Q. Where were you standing?

A. Right by the side in the engine-room.

Q. Is this the signal book that you mentioned?

A. Yes; it is.

Q. What page shows the entries made for September 4, [621] 1940? A. Right there.

Q. Is there an entry there showing the signal received at 7:03?

A. Yes; there is; stand by and slow.

Q. And that was the entry entered by the third engineer? A. Yes.

Q. What was done in the engine-room after that signal was received?

A. According to the order, we did what the order said.

Q. What did the order say?

A. Stand by and slow.

Q. Did you put the engine slow ahead?

A. Yes.

Q. Do you remember who operated the engines at that time?

A. The port engine was by the first engineer and

(Deposition of G. Kato.)

the starboard engine was by the third engineer, Tera-shima.

Q. Did anyone else come into the engine-room after the stand by and slow ahead was rung at 7:03?

A. Yes; there was.

Q. Who?

A. The two second engineers.

Q. When you say the two do you mean the senior second and the junior second? [622]

A. Yes; and the electrical engineer also came down.

Q. Did any more oilers come down?

A. Yes.

Q. Did all of these people, in addition to those that were on regular watch, remain in the engine-room up until the time of the collision?

A. Yes; they did.

Q. What was the next signal received from the bridge on the telegraphs after 7:03?

A. To stop and full astern.

Q. Were you in the engine-room at that time?

A. Yes.

Q. Did you hear the ship's telegraphs?

A. Yes; I did.

Q. Did you hear a jingle? A. Yes.

Q. Did you see the telegraphs yourself?

A. I did.

Q. Did you note yourself what time that signal was received? A. I did.

Q. Do you know who made the entry in the signal book of that signal?

(Deposition of G. Kato.)

A. A man by the name of Nakanura, the electrical engineer.

Q. What was done after that signal was received at 7:00? [523]

A. We immediately did according to what the signals signaled.

Q. Who made the reply to the bridge on the telegraphs? A. The oiler.

Q. Who operated the port engine?

A. At that time the first engineer.

Q. Who operated the starboard engine?

A. Terashima, the third engineer.

Q. What did each of them do in executing the order?

A. They grabbed hold of the handles immediately.

Q. Did they both execute the order promptly?

A. Yes; they did.

Q. What were the steps that each of them had to go through in order to execute the order?

A. They immediately set the engines from slow to full astern.

Q. And how did they do that?

A. You see, it is going ahead and then they have to, naturally, regulate that before they can do anything.

Q. What did they do to regulate it?

A. With compressed air.

Q. They stopped the forward direction of the propellers by compressed air, is that correct?

A. Yes; they did. And then they immediately made it full astern or changed it to full astern.

(Deposition of G. Kato.)

Q. Did they take any steps to increase the revolutions [624] when the engines were put full astern?

A. Yes; they did; they changed them.

Q. What did they do?

A. They put it to full

Q. Did they increase the revolutions from what they ordinarily would have provided for if there had not been a jingle on the telegraph?

A. Yes; they did.

Q. And how did they do that?

A. Because they heard the jingle for the third time and they thought there was something wrong.

Q. How did they do it? How did they increase the revolutions from what they ordinarily would have given?

A. They turned the engines over more than usual.

Q. By what process?

A. They increased the fuel oil supply.

Q. How long did it take after the signal was received in the engine-room to stop the engines and put them full astern before the engines were working in reverse and the propellers were turning in a reverse direction?

A. About 10 seconds.

Q. About 10 seconds? A. Yes.

Q. What was the next signal received from the bridge after the stop and full astern signal at 7:09?

A. Stop. [625]

Q. What time was that received?

A. At 7:11.

Q. Who made the entry in the signal book for 7:11?

(Deposition of G. Kato.)

A. The man Nakamura, the electrical engineer.

Q. Was that signal promptly executed in the engine-room? A. Yes.

Q. Do you remember who operated the two engines?

A. The port was the first engineer and the starboard was the third engineer.

Q. And what was the next signal received from the bridge after the signal stop at 7:11?

A. After that?

Q. Yes; after 7:11. A. Astern.

Q. What time was that received?

A. At 7:13.

Q. Was that full astern? A. Yes.

Q. Who made that entry in the signal book?

A. The third engineer.

Q. The third engineer?

A. Yes; Terashima.

Q. Did you see the telegraphs at the time that signal was received? A. I did.

Q. Was that signal promptly executed on the engines? [626] A. Right away.

Q. Did the same men that you named, who executed the previous order, execute this order?

A. That was changed to Ishi, the second senior engineer. The other one was J. Hara, the junior second engineer.

Q. What was the next order received after 7:13?

A. At 7:14, stop.

Q. Was that order promptly executed?

A. Yes.

(Deposition of G. Kato.)

Q. And what was the next one after that?

A. Slow ahead.

Q. And what time was that received?

A. At 7:18.

Q. Was that order promptly executed?

A. Yes.

Q. And what was the one after that?

A. That was stop.

Q. Was that order promptly executed?

A. Yes.

Q. What was the time of that last stop order?

A. 7:19.

Q. After 7:19, there were no signals received from the bridge for some time, were there?

A. No; not for quite awhile after.

Q. Did the same person make all of the entries in the signal book from 7:13 on to and including 7:19? [627]

A. Yes.

Q. And who was that person?

A. The third engineer, Terashima.

Q. As these signals were received from the bridge, the signals which you have just described, did you note as the signal was received the time that it was received?

A. I did.

Q. Did you check the entries made in the signal book by the various parties that made those entries?

A. I did.

Q. Are those entries correct according to your recollection of the signals received and the times they were received?

A. They are correct.

(Deposition of G. Kato.)

Mr. Adams: I have a photostatic copy of that particular page the witness has been referring to in the signal book and I would like to offer that for identification as Kato's Exhibit No. 1. And, if there is no objection, I will offer this in evidence.

Mr. Clough: Will you have the original book at the trial?

Mr. Adams: Yes.

Mr. Clough: Then, there are no objections as far as I am concerned.

Half 7 58.5
083220 f. 29 1085380

D. Slow f 01

Stop f 04

083430 1085600

D. Slow f 07.5

Half f 11

Slow f 20

D. Slow f 23.5

Half f 26.5

Full f 38

Half f 31

Slow f 32

Full f 33

Half f 35

Slow f 36

Half f 39

Slow f 40

Half f 41

Full f 45

Slow f 50

Stop f 54.5

15750 1088190
Full f 55.5

R/2p f 58

Boat Drill at sea.
2nd Sept. 1940. H.H.
1/13 10⁰⁰.
1/10 10³⁰.

Annual @ Los Angeles
1st Sept 40

5/ 2.3 0 slow

Stop 7⁵²

2370320 out Full 7⁰⁹ 2373880

Stop 7¹¹

2370470 2374000

out full 7¹³
7¹⁵ stop

Stop 7¹⁵

2370610

Stop 7¹³

Stop 7¹⁹

2370690

2374120

Weight in & proceed to her Berth.
(on the same day)

9/E 11 49

KWH. 179885

MST 15.650 16.650 21.500

BST 1.550 (K) 1.550 (A)

B.S.T. 2.150

Slow 11 57.5

12⁰⁰. Slow

2370810.

2374170.

stop 12³³

12^{33.5} stop

2372440

2375830

out Half 12^{42.5}

12^{42.5} out Half

stop 12^{44.5}

stop

2372550

2375880

12⁵⁰

out Half 12⁵¹

Half

(Deposition of G. Kato.)

(Discussion off the record.)

Q. By Mr. Adams: I refer you to the engine-room log [628] book. Have you turned to the page showing the entries for September 4, 1940 in that log book? A. Yes.

Q. Is this the smooth log that you have before you? A. Yes; it is.

Q. Does the smooth log also contain the same entries that you have just referred to in the signal book?

A. No; it is not the same. The second engineer has charge of this and then he figures it out in the smooth log book as to the revolutions.

Q. Does he put down in the smooth log book the entries as they appear in the signal book?

A. Yes.

Q. Have you examined this page of the smooth log book? A. Yes; I did.

Q. From your knowledge of the events that transpired, are the entries made on that page correct?

A. They are correct.

Mr. Adams: I have a photostatic copy of that page and, if there is no objection, I will offer that photostatic copy in evidence as Kato's Exhibit No. 2.

(Deposition of G. Kato.)

Q. When the engines are set at full ahead, what are the regular revolutions turned?

A. It is usually at 118.

Q. When the engines are set at full ahead on reduced revolutions, what are the revolutions turned? [629]

A. Will you read that question again, please?

(Question read by reporter.)

Q. I will withdraw the question. Do you have a stand by full ahead signal? A. Yes.

Q. When you are operating full ahead stand by, do you operate upon reduced revolutions?

A. That is harbor full ahead.

Q. And what are the revolutions that you operate on when you have the engines full ahead stand by? A. 70.

Q. What is your engine speed with the revolutions at 118? A. It depends on the slip.

Q. Without figuring the slip, what do you estimate the engine speed to be?

A. At 118?

Q. Yes. A. 16 miles.

Q. Sea miles or nautical miles?

A. Yes; nautical miles.

Q. When the engines are full ahead stand by and the revolutions are 70, what is your engine speed, without figuring the slip?

A. About 10½ miles, I think, with no slip.

Q. When the engines are slow ahead, what revolutions [630] are turned. A. 50.

(Deposition of G. Kato.)

Q. What is the engine speed without figuring the slip? A. $7\frac{1}{2}$ miles, I think.

Q. Does the actual speed of the vessel vary from the engine speed that you have just given?

A. Yes; it does.

Q. Is the actual speed less than the engine speed which you have just given? A. Yes; it is.

Q. Why? A. Because there is a slip.

Q. What factors occasion the slip?

A. The wind and the draft of the ship and the dirt on the outside of the ship and the tide. On account of that, it changes quite often.

Q. What is the pitch of your propellers?

A. 4.6 meters.

Q. Can you estimate what the slip was at the time of the collision and just immediately prior, taking into consideration the factors that you say influence the slip? A. No; I cannot.

Q. What was the average slip, as shown in the log book, for September 4, 1940?

A. 9.7 per cent.

Q. Over what period of time was that average computed? [631]

A. From noon of the day ahead until the arrival.

Q. Do you mean from noon, September 3rd, until the arrival at Los Angeles Harbor on September 4th?

A. Yes.

Q. If the engines are at full ahead, as they were prior to 7:03 a. m. on September 4, 1940, and the engines are then set at slow ahead and the revolutions

(Deposition of G. Kato.)

reduced to 50, about how long do you think it would require before the revolutions are decelerated to 50?

A. It wouldn't take three minutes at that time. That is only rough.

Q. Do you believe that that was true in connection with the lowering of the speed of the vessel at 7:03, on September 4, 1940, from full ahead to slow ahead?

A. Will you repeat that question?

(Question read by reporter.)

A. What do you mean by that?

Q. Prior to 7:03, the engines were full ahead, were they, on September 4, 1940? A. Yes.

Q. The engines were then, as 7:03, put at slow ahead?

A. Yes; it was put to slow ahead at 7:03.

Q. How long did it take for the revolutions to be reduced to 50 when that slow ahead order was executed?

A. It didn't take up to three minutes. That is a rough estimate. [632]

Q. Did you feel the shock of the collision in the engine-room? A. Just slightly.

Q. Just a slight shock?

A. I didn't know whether it was a collision or not. I heard about it afterwards and then I figured it was about that time.

Q. What is the diameter of your propellers?

A. 4.4 meters.

(Short recess.)

(Deposition of G. Kato.)

Q. When the engines are full ahead and the revolutions being turned are 118, what is the engine speed, without figuring the slip? A. About 17-3/4.

Q. You previously testified, I think, that the engine speed under those circumstances was 16. Do you wish to correct that testimony?

A. Do you mean engine speed?

Q. Yes.

A. Yes; I made a mistake. At eight per cent, it figures out about 16.

Q. Eight per cent of what?

A. That is the slip, eight per cent.

Q. It figures out to what?

A. That figures out 16.2.

Q. That is figuring the slip? [633]

A. Yes; the eight per cent slip.

Q. What does it figure out with the slip at 10 per cent? A. 15.8.

Mr. Adams: You may cross-examine.

Cross-Examination

Q. By Mr. Cluff: Chief, do you have somewhere, either in your engine-room log or your bell book, the tachometer readings periodically during the period before the collision?

A. No; it is not in this book. I have the one at 4 a. m.

Q. You have a tachometer reading at 4 a. m.?

A. Yes.

Q. Is that the last tachometer reading you have in the record here?

A. Before the stand-by signal?

(Deposition of G. Kato.)

Q. Yes.

A. Yes; this is the last one.

Q. That is at 4 a. m.? A. Yes; 4 a. m.

Q. You have tachometer readings on the port and starboard engines at 4 a. m.?

A. Yes; we have two tachometers. We have one of the revolutions at the time of the watch and we have one on the indication of the revolutions, the same as a speedometer on an automobile.

Q. Of the records that you have in the log book, which [634] tachometers are those entries of?

A. This is a reading from the tachometer.

Q. You say that is a reading at 4 a. m.?

A. Yes.

Q. What do you have on the port engine at 4 a. m.?

A. 117.6. That is the average of one watch.

Q. And that is the average of the revolutions for the preceding four hours, is it?

A. The clock was put back at that time, or before that, 15 minutes, at 2 o'clock.

Q. So the actual period covered by that average of 117.6 is three hours and 45 minutes elapsed time?

A. Yes; it will figure out that way.

Q. Is it three hours and 45 minutes or four hours and 15 minutes?

A. No; it is not that because it was put back 15 minutes. Then it will figure out four hours and 15 minutes.

Q. Did you get the same average on the starboard engine? A. 117.8.

(Deposition of G. Kato.)

Q. On the starboard it is 117.8?

A. Yes.

Q. And that is for the same period?

A. Yes; it starts at the same hour and stops at the same hour.

Q. Do you have an indicator there showing the actual [635] number of revolutions progressively on each engine? A. Yes.

Q. Do you have a record of the entries of the actual revolutions shown on each engine for the period of a couple of watches prior to the collision?

A. There is one entry here of the watch before that.

Q. What is the closest entry you have to 9 o'clock on September 3rd, that is, at 9:52 a. m.?

A. Yes; I have one here; I have one entry here of 4 a. m. of September 3rd.

Q. 4 a. m., September 3rd?

A. Yes; and the first one also is at 4 a. m. of the next day.

Q. As to 4 a. m., September 3rd, will you give me the readings of the port and starboard engines?

A. The port engine is 118.1 and the starboard engine is 118.3.

Q. I don't think you understand me fully.

(Discussion off the record.)

A. I have one at 8 o'clock.

Q. On what day? A. September 3rd.

Q. Let's take it at 8 o'clock a. m., September 3rd.

A. Port engine, 118.3; starboard engine, 118.3.

(Deposition of G. Kato.)

Q. No. I want to get the number of actual revolutions as shown by the revolution counter at that time. It will be [636] a figure in the millions.

A. 2,205,370 for the port engine; starboard engine, 2,208,890.

Mr. Adams: What is the time of that?

Q. By Mr. Cluff: That is at 8 o'clock on the 3rd of September? A. Yes.

Q. What is the next entry you have of those same figures?

A. I have the next one at noon of the same day.

Q. Will you give me those for both port and starboard?

A. Port engine, 2,233,650; starboard engine, 2,237,210.

Q. Do you have another one at 4 o'clock p. m.?

A. Yes; I have.

Q. Will you give us the port and starboard?

A. Port engine, 2,261,850; starboard engine, 2,265,480.

Q. Now, the 8 p. m. readings?

A. Port engine, 2,290,030; starboard, 2,293,640.

Q. Now, the midnight reading?

A. Port, 2,318,240; starboard, 2,321,850.

Q. And do you have one now for 4 a. m. on September 4th?

A. Yes; port engine, 2,348,240; starboard, 2,351,880.

Q. Do you have a reading anywhere, a similar reading, of the revolution counters when you have got the stand by at 7:03? A. I have not. [637]

(Deposition of G. Kato.)

Q. Then the next reading you have is what time?

A. When we received the full astern signal, the port engine was——

Q. Just a minute. That is full astern at what time? A. 7:09.

Q. All right. Will you give us the readings there?

A. Port engine, 2,370,320; starboard engine, 2,373.880.

Q. Those are all the readings of that kind that you have prior to the actual collision, is that right?

A. Yes.

Q. Chief, will you describe the process step by step by which the engines of the type of the "Sakito Maru" are stopped and reversed, as, for instance, when you get a bell from slow ahead to full astern? Will you just tell for the record here what the engineer does step by step? What is the first thing he does when he starts to manipulate the engines?

A. You answer immediately.

Q. You answer the telegraph? A. Yes.

Q. Then the next step, when they start to manipulate the engines themselves, is to shut off the fuel, is it not? A. It depends on the engine.

Q. I mean on an engine such as you have on this ship.

A. What are you referring to now?

Q. When you start to stop an engine, going ahead now, [638] and you want to stop, you shut off the fuel?

A. At the time we get the stop engine, we shut off the fuel.

(Deposition of G. Kato.)

Q. That is, just like letting your foot off of a throttle of an automobile.

A. I don't know anything about an automobile, but I think it is about the same.

Q. When the fuel is cut off, that stops the power and the engines start right away to slow down, is that right?

A. When you cut off the fuel, the engine, naturally, stops.

Q. To put it in reverse then, that is, to make the propeller go into reverse, you have to stop the shaft entirely, do you not? A. Yes.

Q. And that you do by means of an air brake?

A. We have an air brake but it is a different process.

Q. Will you describe the process by which it works?

A. If one engine stops, they have some sort of a brake that stops the revolution of that engine.

Q. After the power is cut off and after the fuel is shut off, then you apply the brake to stop the shaft from turning ahead?

A. Yes. But it is not that brake. There is another brake. It is manipulated with compressed air.

Q. Does that air brake operate by friction on the [639] shaft? A. No.

Q. How does it work? How does the brake function?

A. It is stopped with the strength of the compressed air in the opposite direction.

Q. That is against the pistons in the cylinders, is it? A. What do you mean?

(Deposition of G. Kato.)

Q. Where does the compression work to stop the shaft? A. We have that separately.

Q. But where does it work? Where does it function? Where does it apply to the engine to stop it?

A. The piston goes up and down and then the compressed air is applied to that piston and it is shoved down with this compressed air.

Q. That is, the air applies against the stroke of the piston?

A. Anyway, it is done in the opposite direction from the way the piston is working.

Q. And then that brings the shaft to a complete stop, does it?

A. No; not immediately because there has been a speed on that shaft.

Q. But, when the compressed air is applied, it will gradually bring the shaft to a complete stop?

A. Yes.

Q. And, until it comes to a complete stop, of course, [640] it can't be put into reverse?

A. Yes.

Q. So then, after the shaft comes to a complete stop, what is the next step toward putting the engine in reverse?

A. We take the handle of the cam and put it into reverse as far as we can and then we apply the fuel as hard as we can.

Q. And that makes the engine run in reverse then? A. Yes.

Q. So am I right now in saying that the engineer has to go through these four steps to change from ahead to reverse, first he shut off the fuel?

(Deposition of G. Kato.)

A. Yes.

Q. Next, he applies the air to stop the shafts from turning ahead?

A. No. Then we go ahead a little bit and then immediately apply the compressed air.

Q. That is, let a little interval of time elapse and then apply the compressed air?

A. We reverse it first and then we wait. We apply the compressed air to the shaft and bring it to reverse and then we apply the fuel oil as hard as we can.

Q. Then you throw over the lever to reverse the cam?

A. The cam operation is done first.

Q. That is done first before the brake, is it not?

A. Yes. [641]

Q. And then, when the engine comes to a stop, you pour the fuel in and it runs in reverse?

A. Yes.

Q. How many different handles does the engineer have to manipulate to accomplish those maneuvers?

A. Two.

Q. Two handles? A. Yes.

Q. That is, the fuel?

A. No; the reversing handle and the starting handle.

Q. How about the brake?

A. The brake is attached to the starting handle.

Q. It is a part of the same manipulation?

A. Yes.

(Deposition of G. Kato.)

Q. How long a time does it take for the engineer to go through those maneuvers.

A. It depends on the speed of the engine.

Q. Say the engine is going slow ahead to begin with, say about 50 revolutions, and then you want to get it into reverse, with all of the revolutions you can get. How long would that take?

A. Do you mean when it is open full?

Q. Yes.

A. I cannot tell you how long that would take.

Q. Would it be as much as a minute?

A. No; I think it would take more than that. I have no [642] record of that so I can't tell you.

Q. But it would take something more than a minute anyway, wouldn't it?

A. I think it might be accomplished in one minute.

Q. Each engineer has to perform those same functions with both the port and the starboard engine?

A. Yes.

Q. Can you estimate how many revolutions the engines of the "Sakito Maru" attained in reverse after the first full astern and before the first stop bell?

A. What time was that?

Q. That is at 7:09 to 7:11.

A. I cannot give you anything definite on that.

Q. Would you say they got as much as 50 revolutions in reverse?

A. Do you mean here?

Q. I mean full astern at 7:09 and then stop at 7:11. Until you got that stop bell, up to the time that

(Deposition of G. Kato.)

the stop bell came at 7:11, do you think the engines got going as much as 50 revolutions a minute in reverse?

A. No. There were a number of bells sounded at that time and I think it must have gone about 100. I cannot give you anything positive but I think it went up to about that.

Q. That is just before 7:11? A. Yes. [643]

Q. And that is turning in reverse up to almost 100 revolutions? A. I think so.

Q. Do you mean by that an average speed of 100 revolutions per minute or that they turned 100 times?

A. No. The speed gradually increases. It gradually increases from stop and by the time it gets to 7:11 it would attain that amount.

Q. That is, an average of 100 revolutions a minute?

A. I don't mean altogether, but at this time of 7:11. I think that about that time it was turning at about 100.

Q. 100 a minute?

A. That is the average. That is indicated on the indicator or the tachometer.

Q. Here is what I am trying to get at. Do you mean by 100 the rate of speed or the actual turns of the engine?

A. That is prorated at 100 at this time, at 7:11. I prorated that at that time because the indicator shows that. I think it was around about 100.

Q. Chief, the bell book here shows a notation at

(Deposition of G. Kato.)

7:11 on the port engine of 2,370,470. Now, is that the reading of the revolution counter when you got the stop bell at 7:11? A. Yes; it is.

Q. And the one at 7:09, which is 2,370,320, was the actual reading of the counter when the full astern bell came? [644] A. Yes.

Q. Would the difference between those two figures represent the actual number of revolutions which the port engine turned astern between 7:09 and 7:11?

A. Yes.

Q. 150 revolutions about? A. Yes.

Q. All right; I understand. Was that reading of the revolution counter at 7:09 taken after the engine had completely stopped from going ahead?

A. No. It changes from the time that it starts to stop up to this point. It passes the stop signal but then from stop to full astern it gradually decreases.

Q. So that difference between 320 and 470 would represent some revolutions ahead as it was slowing and all revolutions astern?

A. No; it doesn't figure out that way.

Q. Does the revolution counter indicate the number of revolutions that the engines make in reverse as well as the number of revolutions ahead?

A. Yes; it is the same.

Q. Chief, will you look at this Kato's Exhibit No. 1, the bell book, and note the entries from the revolution counter at 7:09 and 7:11? The difference is 150, is it not? A. Yes.

Q. 150 revolutions on the port engine? [645]

A. Yes.

(Deposition of G. Kato.)

Q. That means that during that two-minutes' time the engine had made 150 revolutions?

A. Yes.

Q. That is right, isn't it?

A. That is correct.

Q. Now, can you say whether all those 150 revolutions were made astern or were part of them ahead and part of them astern?

A. They were astern.

Q. All astern?

A. Yes. This is astern and the other one is stop. So they must be all astern.

Q. Do you know who took those revolution counter readings that are set down in the bell book there, Kato's Exhibit No. 1?

A. I am not positive but I think it might have been an oiler.

Q. Do you know in whose handwriting they are entered there?

A. No; I do not know.

Q. Would whoever was taking the revolutions wait until the engines stopped from going ahead before he put down that entry ending in "320"? Would he wait before he took that reading until the engine had completely stopped.

A. Yes; I think he would wait. [646]

Q. And we could use the same reasoning on the starboard engine, and the starboard engine made during that time 120 revolutions?

A. Yes; that is so.

Q. And those would all be made in reverse, too?

(Deposition of G. Kato.)

A. Yes. The engines are operated by two different persons. Therefore, they do not stop or act at the same time.

Q. That is, it depends on the reaction of the engineer and one is a little ahead of the other?

A. No. It depends upon the time; not the person.

Mr. Cluff: I have no further questions.

Mr. Black: I haven't any questions.

Mr. Montgomery: I have none.

Mr. Clough: I have no questions.

Mr. Eastham: I don't believe I need to ask any.

Redirect Examination

Q. By Mr. Adams: Mr. Kato, these readings that Mr. Cluff has referred to in the signal book show, do they not, between 7:09, when the engines were put full astern, and 7:11, when the engines were stopped, that 150 revolutions were turned on the port engine, with the propellers in reverse direction?

A. Surely.

Q. In other words, the port engine during those two [647] minutes turned 150 revolutions in reverse?

A. Yes.

Q. And that is an average of 75 revolutions per minute, is it not? A. Yes.

Q. And, as I understand your testimony, during the second minute the revolutions were faster than during the first minute? Or let me put it this way, Mr. Kato. Is it possible that during the first minute, between 7:09 and 7:10, the engines turned in reverse direction 35 revolutions and during the second min-

(Deposition of G. Kato.)

ute turned in reverse direction 150 revolutions? Is that possible?

A. It is not possible. We heard the signals three times.

Q. Mr. Kato, there was a gradual increase from 7:09, from the first revolution in the reverse direction, up to 150 at 7:11, when the engines were stopped, is that correct? A. That is correct.

Q. And is that also true with respect to the starboard engine except that the total revolutions for those two minutes were 120, is that right?

A. Yes; that is right.

Q. What did you mean when you testified in answer to my question that it required about 10 seconds to put the propellers in reverse motion when the engines were changed from slow ahead to full astern at 7:09? [648]

A. Before we got the signal to stop, the engine was going slow and then from stop it went to full astern.

Q. How long did it take to put the propellers in reverse direction from slow ahead to full astern in execution of the full astern order? I will withdraw that question. In executing the full astern order at 7:09, how long did it take from the time you first executed that order or started to execute it to put the propellers in reverse direction?

A. About 10 seconds.

Mr. Adams: No further questions.

(Deposition of G. Kato.)

Recross-Examination

Q. By Mr. Eastham: I would like to know how long it would take from the time the signal of full speed astern was received until the ship responded.

Mr. Adams: I object to the question as unintelligible with respect to the portion of it that refers to when the ship responded. I don't know what is meant by that.

Mr. Eastham: When the ship gained sternway as opposed to headway.

Mr. Adams: Then, I object to the question upon the obvious ground that the engineer, being in the engine-room, was in no position to determine when the ship gained sternway. If you wish to ask him what his general experience is, I have no objection but as to this particular question I object upon that ground. [649]

Mr. Eastham: If he can't answer the question, it is all right with me but I think it is more important to know what the ship did than what the engines were doing.

Mr. Adams: Do you wish to pursue that inquiry further?

Mr. Eastham: If the witness doesn't want to answer, it is all right with me.

Mr. Adams: I simply offered an objection to the question. If you wish to pursue it, you may do so or reframe it.

Q. By Mr. Eastham: Do you understand the question, Mr. Kato?

(Deposition of G. Kato.)

A. Will you repeat that question, please?

(Question read by reporter.)

A. I can't see that. I am down in the engine-room.

Q. You can't tell from being in the boat when she is going astern, is that right? A. No.

Q. As a matter of fact, the ship never did stop when she struck the barge, isn't that right?

Mr. Adams: I object to the question upon the obvious ground that the witness was in the engine-room and was in no position to see.

Mr. Eastham: O. K.

Mr. Adams: Is there anything further from this witness?

Mr. Clough: That is all. [650]

SO SHIMADA,

a witness on behalf of Respondent-Claimant-Petitioner and Cross-libelant Nippon Yusen Kabushiki Kaisya, being first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Adams: What is your full name?

A. So Shimada.

Q. How do you spell your last name?

A. S-h-i-m-a-d-a.

Q. Mr. Shimada, you are an A. B. sailor aboard the "Sakito Maru" now? A. Yes.

Q. You were also an A. B. sailor on September 4th, the day of the collision? A. Yes.

(Deposition of So Shimada.)

Q. How long have you been to sea?

A. Three years.

Q. When did you join the "Sakito Maru"?

A. Showa year 13; 1939.

Q. When did you turn to work on the morning of September 4, 1940? A. 6:30 a. m.

Q. What did you do when you first went to work that morning?

A. I was wiping and cleaning. [651]

Q. Where?

A. On the house on the upper deck.

Q. After you commenced work, did you hear the fog signals of the "Sakito Maru" start sounding?

A. Yes; I did.

Q. What did you do when you first heard the fog signals of the "Sakito Maru"?

A. I went to the forecastle.

Q. Did you immediately go to the forecastle?

A. Yes.

Q. What did you do when you got to the fore-castle head? A. I acted as lookout.

Q. Where did you stand?

A. Right in the bow.

Q. I show you a photograph which is Yokota's Exhibit No. 6. Does that show where you stood?

A. Yes; it does. It is right there.

Mr. Adams: Let the record show the witness pointed out the platform shown in that photograph.

Q. What did you do when you got on that platform? A. I acted as lookout.

(Deposition of So Shimada.)

Q. What did you do in acting as lookout?

A. I looked around forward and on both sides.

Q. Did you continue to do that up until the time you sighted the barge?

A. Yes; I looked on both sides and ahead of me. [652]

Q. Did you see the barge "Olympic II" while you were standing there as lookout?

A. You mean did I see it?

Q. Yes. A. Yes; I did.

Q. About how long had you been out there standing lookout before you saw the barge?

A. I cannot give you anything definite on that.

Q. What is your best recollection?

A. About five minutes.

Q. Before you saw the barge, did you hear any signals? A. I don't understand you.

Q. Before you saw the barge, did you hear any whistles from other vessels or any bells from other vessels?

A. No; I didn't hear any.

Q. Where was the barge when you first saw it?

A. Ahead of the ship.

Q. Straight ahead?

A. Yes; straight ahead.

Q. Was it lying at right angles to the course of the "Sakito Maru"?

A. I don't understand about right angles. (Discussion between the witness and the interpreter in Japanese.) I don't know whether it was at right angles or not. I was looking right straight ahead

(Deposition of So Shimada.)

of me. I couldn't look at the stern at the same time. [653]

Q. What did you do when you first saw the barge? A. I reported to the bridge.

Q. How?

A. I reported that I saw a vessel ahead of us.

Q. How did you report it?

A. With a megaphone.

Q. I show you a photograph marked Yokota's Exhibit No. 6. Does that photograph show the megaphone you used?

A. That is the megaphone there.

Mr. Adams: Let the record show the witness is pointing out the megaphone shown in the photograph.

Mr. Montgomery: Mr. Reporter, does the record show that the witness did not understand the meaning of the term "right angles"?

(Record read by reporter.)

Q. By Mr. Adams: Mr. Shimada, when you said you couldn't look at the stern at the same time, do you mean you couldn't look at the stern of your vessel?

A. Yes; our ship, the "Sakito Maru".

Q. Was the barge at right angles to you as you stood at the bow of the "Sakito Maru"?

A. Anyway, I don't know the position of the barge. I saw this vessel from the bow of my ship, where I was standing.

Mr. Cluff: The witness has just placed the po-

(Deposition of So Shimada.)

sition of the ships, with the models I produced, at right angles, with the model representing the "Sakito Maru" pointed [654] approximately amidships of the model representing the barge. And will the interpreter please ask the witness if the way he has just placed the models is the way the barge appeared to him at that moment he first sighted it?

A. I know that the side of the vessel was showing but whether it was at right angles or whether it was a little to one side or the other I can't tell.

Q. By Mr. Adams: After you sighted the barge, do I understand you immediately yelled through the megaphone to the bridge? A. Yes.

Q. What did you yell?

A. "I see a vessel ahead."

Q. What did you do after you did that?

A. I was standing there and watching it for awhile.

Q. Did you continue to stand on the platform?

A. Until the collision?

Q. Yes.

A. Before it hit, I got down from the forecastle.

Q. You got down from the platform?

A. Yes; I got down from the platform and went to the lower deck.

Q. You got off the forecastle head?

A. Yes.

Q. While you were standing on the platform, after you gave the warning, did you notice whether the "Sakito Maru" [655] seemed to change her heading? A. That I don't know.

(Deposition of So Shimada.)

Q. How far away do you think the barge was from the bow of the "Sakito Maru" when you first saw her?

Mr. Montgomery: I would like to object to that as no proper foundation has been laid to show that this witness could estimate any distance or make any other estimates.

A. I don't know.

Q. By Mr. Adams: Did you see any people on the barge at any time? A. I did.

Q. Where were you standing when you saw people on the barge?

A. I was standing as a lookout.

Q. What were the people doing?

A. Do you mean after the collision?

Q. No; after you first saw the barge.

A. Yes; I did see them.

Q. What were they doing?

A. They were fishing.

Q. This was before the collision, was it?

A. Yes.

Q. Were you standing on the platform at the bow at that time? A. Yes.

Q. After you got off the platform and the fore-castle [656] head and went down on the deck, did you again look at the barge?

A. Yes; I looked over from the port side.

Q. At that time did you see people on the barge?

A. I did.

Q. Did you see what those people were doing?

A. They were reeling up the lines.

(Deposition of So Shimada.)

Q. After you first saw the barge, did you hear any signal from the barge?

A. After I was able to see the people there, I heard it.

Q. What did you hear? A. A bell.

Q. Did you hear a continuous ring on the bell or separate peals of the bell?

A. Continuous.

Q. After you left the forecastle head and went down on the deck and looked over the port side and saw the barge, what did you do after that time?

A. I went for the preparation of the lifeboat?

Q. Did you get into the lifeboat?

A. Yes; I did.

Q. Were you a member of the lifeboat crew that searched the waters for survivors or bodies?

A. Yes; I was.

Q. Did you see any people or any bodies in the water? A. I didn't see any. [657]

Q. While you were standing on the platform looking out, prior to the time you saw the barge, did you have any other duties besides just standing as lookout? A. I was just acting as lookout.

Mr. Adams: No further questions.

Cross-Examination

Q. By Mr. Cluff: How many minutes were there between the time you first saw the barge ahead and the collision? A. I don't know.

(Deposition of So Shimada.)

Q. Was it as much as five minutes?

A. I don't know.

Q. About how far ahead, how many meters ahead, was the barge when you first saw it?

A. I don't know.

Q. Do you know how many ship lengths of the "Sakito Maru" or how many times the length of the "Sakito Maru"?

A. I don't know.

Q. Do you think it was as much as four or five ship lengths of the "Sakito Maru"?

Mr. Adams: That is objected to as having already been asked and answered.

Mr. Cluff: We will press for an answer.

A. I don't know how many lengths.

Q. Did you see any other ships besides this one barge that the "Sakito Maru" ran into? [658]

A. I saw a motorboat.

Q. Where was the motorboat?

A. After the collision, I saw the motorboat on the other side of the barge.

Q. Did you see any other barges like the one that was sunk? A. I didn't see any.

Q. How old are you? A. 19.

Q. 19 now? A. Japanese 19.

The Interpreter: That is one year ahead of ours. When they are born, they are one year old.

Q. By Mr. Cluff: Then, according to American calculations, you would be 17 in September, 1940?

A. I don't know how they figure the ages in this country.

(Deposition of So Shimada.)

Q. When was your birthday Japanese style?

A. March 10th, Taisho 12, 1923.

Q. Then you were born March 10, 1923?

A. Yes.

Mr. Cluff: I don't have any further questions.

Q. By Mr. Black: How tall are you?

A. Five feet two and one-half.

Q. How high is the top of the rail above the platform where you stand? [659]

A. Where do you mean?

Q. At the top of the rail above the platform where you stand.

A. Do you mean the top right there, the bulwark?

Q. Yes; the bulwark.

A. It comes to about there.

Mr. Cluff: Indicating about the height of the navel? A. Yes.

Q. By Mr. Black: How long have you been going to sea? A. Not quite three years.

Q. Has that been continuous service at sea?

A. Yes.

Q. And that is a little less than three years up to the present time?

A. It won't be quite three years.

Q. Up to the present date? A. Yes.

Q. So it would be a little over two years at the time of the collision? A. Yes.

Q. Did you hear your own vessel blow three short blasts before the collision?

A. I don't know.

(Deposition of So Shimada.)

Q. Did you hear any fog signals from your own vessel, after the first one you heard, when you went up on the fore-castle head? [660]

A. Yes; I did.

Q. How many did you hear?

A. I don't know the number.

Q. Do you wear glasses to read by?

A. No; I don't.

Mr. Black: That is all.

Mr. Adams: Are there any further questions by other counsel?

Mr. Eastham: I don't care to ask any.

Mr. Clough: I don't think so.

Mr. Adams: That is all.

Mr. Cluff: Mr. Adams, before we close this session, I would like to ask if the two witnesses, the lookout and the first officer, will, when the ship returns, be willing to submit themselves to very brief vision tests by a technician, about the same test they give an automobile driver under the California law.

Mr. Adams: Personally, I don't see any objection to that procedure but, after all, that involves something personal with each of the witnesses and I have no control over their actions.

Mr. Cluff: Will you undertake to ascertain and advise us before the ship returns if they will submit to such tests? We offer to have the tests made by a qualified optometrist, without expense to the witnesses or the other side.

Mr. Adams: I would like to ask if you will ex-

tend the [661] same privilege to me to have Mr. Ohiser tested.

Mr. Cluff: Yes; I will be glad to if he is available.

Mr. Adams: I will be glad to endeavor to arrange for these witnesses to submit themselves to such a test if I have a like opportunity to have Mr. Ohiser's eyes examined without his glasses, which I understand he was not wearing at the time of the collision.

Mr. Cluff: Yes; there is no objection to that if we can catch him. I don't know where he is now. I heard he was sailing on a voyage but I also heard somewhere that he was back.

Mr. Adams: I don't know whether these witnesses will continue to remain aboard the "Sakito Maru" but I will take it up with them and see if they will be willing to do that when the ship next returns to Los Angeles.

Mr. Cluff: She is expected back some time in August?

Mr. Adams: As far as I know, unless she is taken off the run for some reason I don't anticipate, or unless they are transferred to some other job.

Mr. Cluff: Will you within a reasonable time of her arrival let us know if they are available and if they will submit to the tests and we will arrange to have a convenient time and place for the tests to be taken?

Mr. Adams: I will endeavor to do so.

Mr. Eastham: Mr. Adams, do I understand you are going to take the deposition of the former master, that is, the [662] master of the "Sakito Maru" on September 4, 1940?

Mr. Adams: Not necessarily. I hope to have the master present at the trial but, if he is not present at the trial, we certainly intend to obtain his testimony by deposition if we can. And, in addition to that, we intend to obtain the testimony by deposition of all other witnesses aboard the "Sakito Maru" who know any material thing concerning the circumstances of the collision.

Mr. Eastham: I was just wondering if you had any idea about the time you might have him here.

Mr. Adams: I think probably we will have him present for the trial.

Mr. Montgomery: Mr. Adams, if you do have any further depositions, we would appreciate a little more notice than we had of these depositions.

(Discussion off the record.)

[Endorsed]: Filed Sep. 18, 1941. [663]

Mr. Cluff: No objection to the offer. May it be stipulated that, prior to the submission or subsequent to the submission of the case here, and during the time provided for arguments or authorities, that any specific objections which any counsel have may be noted in writing and given to the Court?

The Court: I haven't any objection to that practice. I don't know, gentlemen, just where you are headed, what you gentlemen have in mind.

Mr. Adams: The inspectors will bring the captain down in a very few minutes.

The Court: But I have in mind that the Court is going to be in considerable darkness here, and probably the visibility [663a] will be far worse than it was on that morning, on this question of some expert testimony from somebody who knows something about these bulkheads. For instance, you take the bulkheads on the "Olympic II", how is the Court going to determine that the failure to have those bulkheads contributed in any way to the deaths of these people? That question came up this morning.

And then, here is another question that I am interested in: The testimony of the officers, the engineers in charge of the "Sakito Maru", shows that she came definitely on 340 degrees true. They have the graph that shows her movements. The testimony on one side tends to show that she changed her course. Now, I don't know. It seems to me that, with the mechanical device that way, once they can show that those devices are accurate, or allow leeway, that the Court is going to accept that chart.

Mr. Cluff: But the graph does show she changed her course. She changed her course 10 degrees to starboard.

Mr. Adams: It shows she changed her course 10 degrees to starboard just about one minute prior to

the impact. That will be our testimony, if the Court please.

The Court: And then another thing that I will want more definite information on is the size of that hole in the "Olympic". That is going to be important so far as the bulkheads are concerned. In other words, it is rather indefinite. Some say it was cut through about half way through, and some say [664] more than half way through. How much of a hole did that make in the side of the "Olympic"? And there should be some testimony here from those who can tell from the bow of the "Sakito Maru" as to the extent that the "Sakito Maru" extended into the "Olympic"; and that would also give the depth, and then that would also give the breadth of the gash.

Mr. Cluff: We shall have evidence on that point, very definite evidence.

Mr. Adams: I have drawings in my hand now covering that feature.

Mr. Cluff: We might get together on a stipulation on that. Who did you have for surveyors?

Mr. Adams: These are drawing by either the captain or one of the officers aboard the "Sakito".

Mr. Cluff: We had before my time Mr. Alderson, former Lloyd's surveyor, who made the survey.

The Court: Is your witness present now?

Mr. Adams: Yes, if the Court please.

The Court: You may proceed. [665]

Mr. Adams: Now let me see if we have an interpreter here.

I might state with reference to the court's comments about the bulkhead, if these orders and specifications were lawful, there is an admitted non-compliance with them. That constitutes the statutory fault. The burden would be upon Hermosa to prove that it had no contribution, did not contribute in any respect to the collision or losses which occurred.

The Court: I don't know whose burden it is, but the court is groping for that information so that it can pass upon these questions, as far as the court is concerned, with some degree of satisfaction.

Mr. Adams: I might state that we will carry what burden we conceive to be ours in that respect.

Mr. Cluff: The court cannot tell, neither can we, that is, we can't defend a case until we are attacked. I take issue with counsel's statement about a rule of the inspectors.

The Court: Very well.

Mr. Adams: The United States Supreme Court now has decisions on that point.

Mr. Cluff: We will argue that when we get around to it, but we will have testimony on that point before the case closes.

Mr. Adams: I would like at this time to offer the [666] depositions of Lieut. Hewins and Lieut. Bartlett. I believe the court has read those depositions?

The Court: I have read them. [666a]

